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FEDERAL GOVERNMENT'S RELATIONSHIP WITH AMERICAN INDIANS

HEARINGS

BEFORE THE

SPECIAL COMMITTEE ON INVESTIGATIONS

OF THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

NATURAL RESOURCES ON INDIAN LANDS

MAY 10, 1989

WASHINGTON, DC

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NATURAL RESOURCES ON INDIAN LANDS

WEDNESDAY, MAY 10, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
SPECIAL COMMITTEE ON INVESTIGATIONS,
Washington, DC.

The special committee met, pursuant to notice, at 10:05 a.m., in room 628, Dirksen Senate Office Building, Hon. Dennis DeConcini (chairman of the special committee) presiding.

Present: Senators DeConcini and McCain.

Also present: Senator Nickles.

Staff present: J. Sedwick Sollers, III, Kenneth Ballen, and Kathy Momot.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DECONCINI. The Special Committee on Investigations will come to order.

This is our second day of testimony on natural resources on Indian lands. I yield to my co-chairman, Senator McCain, if he has any statement he cares to make in the opening.

Senator MCCAIN. Mr. Chairman, I was just talking with some members of the Fourth Estate concerning what the options of Koch Corporation are, and it is my understanding that if they choose to come and testify before this committee, they would be welcome to do so, and they have been offered that opportunity.

Is that an accurate statement?

Senator DECONCINI. I do not know if they have been offered the opportunity. That is our policy. We would try to make that opportunity available, as we did to Mr. MacDonald during the last hearings, or to anyone else. We have not had a request. If we do have one, we certainly would do our very best to schedule it.

Senator MCCAIN. So it would be appropriate to say in this public forum that if they wish to testify before the committee they could do so.

Senator DECONCINI. Let me just caution that we ask that statements be submitted 48 hours ahead of time, and we would want them to comply with our rules as we ask other witnesses to do, although we have made some exceptions when witnesses have not had stenographers and people to put their statements together available to them.

Senator MCCAIN. Yes, sir.

And maybe I could re-emphasize what you and I both said yesterday. That is that this is taken as an example of what is happening in this whole issue.

The assets of the committee are limited. There are other areas that we could go into. We believe the same kind of practice is going on—it is just that this particular case was taken to highlight the problem so that we can address the issue legislatively.

We are not a Government agency charged with prosecuting or pursuing allegations of crime. We will be turning over any information we have. There seems to be some confusion about that.

Senator DECONCINI. Well, I think the point is well taken, Senator, that we are not a grand jury or a jury here.

We are investigative. We have limited resources. We go out to the field and make inquiries. We have allegations brought to us and we check them out. If there is substance to them, we then go through the processes, as we have in the past, of deciding what to bring forward and to lay out for the record.

And the Senator is absolutely right. This is one of a number of companies that we had information about, and we cannot spend 3 or 4 days on this issue. So the Senator is right.

Let me assure you for the record that if people want to testify, we ask that they comply with our rules; that is, they make a request and they submit their testimony.

It is important to note here that the Koch individuals and many of those who testified and many who did not testify were indeed deposed, where they had an opportunity to give their side of the story, and we do have those depositions in our files today.

Anything further, Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman.

Senator DECONCINI. Thank you very much.

We will now proceed with the first panel, and that is Chuck Norman, accountant, Special Committee on Investigations; Marvin Cook, director, Energy Resources Division, Southern Ute Tribe, and Brad Boyce, Geologist, Energy Resources Division, Southern Ute Tribe.

Gentlemen, would you all come up?

[Witnesses sworn.]

Senator DECONCINI. Mr. Sollers.

STATEMENT OF CHARLES A. NORMAN, ACCOUNTANT, SPECIAL COMMITTEE ON INVESTIGATIONS; MARVIN COOK, DIRECTOR OF ENERGY RESOURCES DIVISION, SOUTHERN UTE TRIBE; AND BRADFORD C. BOYCE, GEOLOGIST, ENERGY RESOURCES DIVISION, SOUTHERN UTE TRIBE

Mr. SOLLERS. If each of you would please state your full name for the record?

Mr. COOK. Marvin Cook.

Mr. SOLLERS. Mr. Norman?

Mr. NORMAN. Charles A. Norman.

Mr. SOLLERS. Mr. Boyce?

Mr. BOYCE. Bradford C. Boyce.

Mr. SOLLERS. Mr. Norman, you testified yesterday and were introduced to the committee. You are the accountant assigned to the committee, is that correct?

Mr. NORMAN. That is correct.

Mr. SOLLERS. And you have been involved in looking into various natural gas issues on behalf of the committee, is that true?

Mr. NORMAN. Yes, sir.

Mr. SOLLERS. Now, Mr. Cook, if you could give a little bit of your background and what your current position is at the Southern Ute Tribe?

Mr. COOK. I am energy resources director and coordinator for the Southern Ute Indian Tribe.

I have been with the tribe for going on nine years now. I have served in the capacity as the director for the last 3 years.

My prime responsibility is to oversee and make sure that all the development that is required is done, under current status.

Mr. SOLLERS. And are you a member of the Southern Ute Tribe?

Mr. NORMAN. Yes, sir; I am.

Mr. SOLLERS. Mr. Boyce, your background?

Mr. Boyce. I am a geologist. I have a geology degree from Middlebury College in Vermont.

I am Marvin's manager of exploration and production. I am actually the technical hand for him and am responsible in ensuring that wells are drilled properly, that production occurs properly, and that the leases are developed.

Mr. SOLLERS. Mr. Norman, I will turn to you, and ask you to give an overview of natural gas as a resource, and particularly as a resource that the Native Americans rely upon for royalties.

Mr. NORMAN. Well, Mr. Sollers, it is an extremely significant resource, and given the environmental considerations that are becoming more important every day, I believe natural gas will assume an even broader role as time goes on, as an important mineral resource for Indian Tribes and allottees.

Like oil, payment to royalty owners and others on natural gas production is based on quality and quantity considerations.

Mr. SOLLERS. Do you know the amount of royalties paid to Native Americans on natural gas last year?

Mr. NORMAN. Well, natural gas is produced alone and in conjunction with crude oil in many cases, so it is difficult to segregate those two products. But I could give you an educated guess on that.

Mr. SOLLERS. Would it be fair to say that it is substantial?

Mr. NORMAN. In the tens of millions, yes.

Mr. SOLLERS. Now, how is natural gas measured—and I realize it is a fairly esoteric science. If you could give us a very basic overview, that would be helpful.

Mr. NORMAN. Gas flows from the well through a meter. It is important to note that the purchaser typically owns these meters, and everyone else has very limited access to these devices.

Simply stated, the gas meter measures pressure of the gas in the pipe, the temperature of the gas, and the differential of the flow of the gas across a known gradient—an orifice plate, if you will—which is a circular, flat device with a hole in the middle that allows measurement to be documented.

These items—pressure, temperatures and the flow—are recorded onto a chart that is periodically removed and interpreted. From that chart, volumes are calculated and that chart becomes the basis of payment to royalty owners and other interest owners.

Mr. SOLLERS. Would you estimate that the measurement of gas is more complicated than oil measurement?

Mr. NORMAN. Much more complicated, yes. It is much more technical.

Mr. SOLLERS. And is the actual measurement within the control generally of the purchaser?

Mr. NORMAN. Yes, sir, it is.

Mr. SOLLERS. You stated that the meters themselves are generally the property of the purchaser?

Mr. NORMAN. The meters are the property of the purchaser. Perhaps more significantly, the charts that I just mentioned can only be interpreted or integrated as the industry terms it by way of equipment—sophisticated and very expensive equipment—which is in the hands of purchasers and a few outside firms that perform this service on a contract basis.

Mr. SOLLERS. How difficult is it to monitor gas purchases, if you are, say, the owner of the lease itself, as opposed to the purchaser? How difficult is it for you to go in and measure behind a purchaser?

Mr. NORMAN. Well, I will contrast it with oil.

We learned about how it is possible to perform the function you just mentioned via a back gauging operation on an oil lease, and that simply is not feasible on a gas lease. So you have got a couple of options.

First, the producer can install his own meter, alongside the purchaser's meter, but that is an option—due to the cost and technical considerations—that often does not occur.

The second option you have is to request a copy of the charts that we just discussed, and have those integrated on your own. But those both require a fair amount of technical expertise and therefore it is a limited option.

Mr. SOLLERS. Would it be easier to mismeasure gas than to mismeasure oil?

Mr. NORMAN. In my opinion, yes.

Mr. SOLLERS. And what are the factors that would affect that?

Mr. NORMAN. Well, a list that is not all-inclusive could include—these are some of the items that could affect either positively or negatively on royalty owners—liquids in the pipeline, which can distort the meter measured gas; the wrong size orifice plate, obviously, would have a significant impact; incorrectly calibrated meters; worn orifice plates or simply improper integration of the charts after they are removed from the meter and read by the technician on the other end of the process.

Mr. SOLLERS. Do you have any examples of mismeasurement and how that can occur?

Mr. NORMAN. Well, one example that comes to mind is if you had the wrong size orifice plate—and in this case an orifice plate that was too large—in a meter, it is possible for the meter to show a well with zero production, when in fact gas is flowing through the pipe.

Mr. SOLLERS. And indeed, this committee received allegations that at least one large gas company had a pattern practice of putting in large orifice meters in low producing wells, thereby not even measuring any of the gas coming out of these low-producing wells, is that correct?

Mr. NORMAN. Yes, sir; that is correct.

Mr. SOLLERS. Now, in your estimation, is there a vast opportunity for theft in the natural gas area?

Mr. NORMAN. There is an opportunity for theft and mismeasurement in the gas area, yes.

Mr. SOLLERS. Now, did the committee embark on an investigation to try and substantiate these allegations concerning the wrong sized orifice plates?

Mr. NORMAN. Yes, sir.

Mr. SOLLERS. And what, in fact, did the committee do?

Mr. NORMAN. Well, through interviews, depositions and in fact some field tests of our own, we have documented the issue in question here.

Mr. SOLLERS. And where did the investigation take place?

Mr. NORMAN. The examples I am going to discuss today occurred in conjunction with the Southern Ute Tribe, based in Ignacio, CO.

Mr. SOLLERS. Was this a widespread investigation the committee conducted, or was it a limited investigation, to give it sort of a random sample?

Mr. NORMAN. As the Chairman has indicated, due to our resources, we were only able to perform this on a sample basis, but I believe it is representative of the types of activities that occur throughout Indian producing lands.

Mr. SOLLERS. Can you summarize the findings of the investigation that occurred on the Southern Ute?

Mr. NORMAN. Yes, sir.

From April 27 through May 4, the Southern Ute Energy Resources Division conducted a field inspection of gas metering facilities and calibrations on a sample of Southern Ute Reservation producing gas wells.

The Southern Ute personnel inspected 25 wells, involving six different operating companies and four different gas measuring operators. That inspection resulted in identifying nine wells out of the 25 needing meter adjustments or repairs.

Several others needed moderate to major repairs. Overall, 76 percent of their sample resulted in finding meters that were not functioning properly.

Mr. SOLLERS. How serious were these problems that were uncovered?

Mr. NORMAN. They are serious on the Southern Ute Reservation alone, and obviously if you applied those results and extrapolated those to other Indian reservations, which I believe is a fair extrapolation—it is a serious problem.

Mr. SOLLERS. Who has jurisdiction over these wells? What Government agency?

Mr. NORMAN. The Bureau of Land Management has responsibility for site inspection, and that would include, in my opinion, the monitoring of these metering devices.

Mr. SOLLERS. Are there any other examples of problems that were uncovered?

Mr. NORMAN. Well, I will shift gears a little bit.

There is an example again with the Southern Ute Tribe that I think is as egregious as the topic we discussed yesterday, and that is improper lease cancellation.

Let me elaborate on that a little bit, if I can. Indian lease terms require production in paying quantities, following the expiration of the primary lease term. That is 10 years, typically.

The Southern Ute Tribe has, on their own, initiated several cases of lease violations of this lease term that undetected would have cost the tribe over $15 million in recent years had it gone undetected.

In spite of the fact that BLM and MMS has data on file that indicated a violation of these lease terms, they either did not notice or simply did not act. Fortunately, the Southern Ute personnel, who are very sophisticated in mineral management functions, identified the problem, cancelled the leases, and were able to obtain more favorable terms and proceed in that fashion.

So, BLM has simply permitted companies, it appears, to hold these leases on a speculative basis over long periods of time, with little or no oversight.

Mr. SOLLERS. Have you detected any other problems?

Mr. NORMAN. Well, those are the most egregious examples I can produce right now. There are others.

Mr. SOLLERS. Let me drop back to the investigation that was performed on the wells of the Southern Ute.

Were the allegations that actual theft was occurring substantiated, or not?

Mr. NORMAN. We did not discover with the Southern Ute example—we do not believe these examples or their sample field tests revealed theft, but they did indicate mismeasurement. Whether it be intentional or unintentional, it seems to me that the result is the same.

There is a potential and a very probably misstatement of Indian royalties.

Mr. SOLLERS. Is the problem more of neglect and lack of oversight with regard to those problems uncovered?

Mr. NORMAN. In this instance, yes.

Mr. SOLLERS. Now, with regard to the lease problem that you identified, you have had experience with a number of tribes across the country, have you not?

Mr. NORMAN. Yes, sir.

Mr. SOLLERS. And in your estimation, is the Southern Ute perhaps the most sophisticated from a resources management standpoint?

Mr. NORMAN. From the standpoint of a total resource management group, I would rank them as the most sophisticated, yes.

Mr. SOLLERS. And without the sophisticated know-how and expertise held by the Southern Ute, would such a problem as this lease difficulty have been uncovered at all?

Mr. NORMAN. There is no question in my mind that it would not have been uncovered, and, in fact, it goes uncovered every day.

Mr. SOLLERS. It goes undetected, is that true?

Mr. NORMAN. It goes undetected, yes.

Mr. SOLLERS. And most tribes, and certainly the allottees in Oklahoma, must rely upon the Federal Government, is that correct?

Mr. NORMAN. Their only guardian, if you will, is the Bureau of Land Management, and their record, at least in this area, is pretty abysmal, in my opinion.

Mr. SOLLERS. Now, Mr. Cook, let me turn to you for a moment, and ask you to give a brief description of the Southern Ute reservation and its resources.

How many oil and gas wells are on the reservation, if you know?

Mr. COOK. The Southern Ute Indian Reservation is a rectangular area, and I have my figures here, and I am sorry, sir, I have to pull them out.

Mr. SOLLERS. That is fine. Take your time.

Mr. COOK. The reservation as it is situated is a rectangle. It sits in the southwest corner of Southern Colorado.

We primarily have, surface-wise, initially 684,000 acres that are involved in the reservation, of which 309,000, or close to 310,000 acres belong to the tribe.

The tribe right now has 87 standard leases. We have 12 nonstandard leases that now exist within the reservation. We have approximately 900-plus wells that the tribe in one way or another has an interest in.

Mr. SOLLERS. All right. Now, are those oil wells, gas wells, or a combination?

Mr. COOK. There is a combination. We have just two oil wells out of all the wells that we operate, oversee, or take care of.

Mr. SOLLERS. Does the Southern Ute and your department in particular have an active program of monitoring leases?

Mr. COOK. We do not have an active program with regard to being physically out there. But we do have incorporated into our system a monitoring system, which we were capable of taking a look at and overseeing operations.

Mr. SOLLERS. Have you performed any back gauging at all?

Mr. COOK. Back gauging?

Mr. SOLLERS. Right—checking the measurement of oil companies, oil purchasers, or gas purchasers?

Mr. COOK. No, sir. We have not physically, on that part.

Mr. SOLLERS. Was this program that was instituted in cooperation with our committee the first well monitoring program that was instituted on the reservation?

Mr. COOK. You mean what was discussed this morning?

Mr. SOLLERS. Yes, sir.

Mr. COOK. Yes; this just occurred the last few weeks.

Mr. SOLLERS. And it uncovered a fair amount of problems, is that true?

Mr. COOK. Yes, sir, we feel it did.

Mr. SOLLERS. Do you know approximately the amount of royalties that the Southern Ute receive from oil and gas?

Mr. COOK. The royalties of the Southern Ute Indian Tribe account for approximately 94 percent of the total revenue generated.

Mr. SOLLERS. Now, you stated or testified that you had been in your position for approximately 9 years?

Mr. COOK. I have been with the Southern Ute Tribe energy division for approximately 9 years, yes, sir.

Mr. SOLLERS. Have you had experience with the Bureau of Land Management during that time?

Mr. COOK. Yes, sir.

Mr. SOLLERS. How effective has been their inspection program?

Mr. COOK. To date, I have not seen anything that would make it easy for me to say that they are doing their job out there.

Mr. SOLLERS. Have you ever observed BLM personnel performing back gauging or measuring behind crude oil purchasers?

Mr. COOK. No, sir.

Mr. SOLLERS. How about production verification of natural gas wells?

Mr. COOK. No, sir.

Mr. SOLLERS. Has BLM ever detected any theft on your land?

Mr. COOK. Not that I am aware of.

Mr. SOLLERS. Has your department ever referred any cases to BLM?

Mr. COOK. Yes; we have.

Mr. SOLLERS. And what has been the response?

Mr. COOK. There has been reluctance on their part to want to participate.

Mr. SOLLERS. To whom did you refer these cases?

Mr. COOK. We referred it directly to the office in Durango, which is our district office.

Mr. SOLLERS. Would you have referred these cases to BLM inspection or BLM law enforcement, or do you know which?

Mr. COOK. Well, we referred it directly to the BLM people who have the responsibility for oil and gas.

Mr. SOLLERS. Do you know whether or not any investigations ensued from that referral?

Mr. COOK. Not that I am aware of, sir.

Mr. SOLLERS. Mr. Cook, is it fair to say that your Tribe is as sophisticated in natural resource issues as any in the Country?

Mr. COOK. I believe so.

Mr. SOLLERS. Are you aware that the committee has found a substantial problem with purchaser oil theft?

Mr. COOK. Yes, I am aware of that.

Mr. SOLLERS. Does your department, your Tribe, have the capacity to detect such theft right now?

Mr. COOK. Yes, sir, we do.

Mr. SOLLERS. Do you think you have had fair results from having that capacity?

Mr. COOK. Yes, we have.

Mr. SOLLERS. Your understanding is that most tribes would not have that capacity?

Mr. COOK. That is my understanding.

Mr. SOLLERS. And certainly the allottees in Oklahoma, the individual royalty owners, would not have that capacity, is that true?

Mr. COOK. That is true.

Mr. SOLLERS. Do you have any suggestions as an expert in this area as to what the Government should be doing?

Mr. COOK. Well, Mr. Sollers, that is a good question.

But I do believe that we have been trying desperately to work and try to get cooperation through the BLM. In 1987, we tried desperately to develop a relationship through a cooperative agreement which has not gone anywhere with them, and with us. They just do not want to sit down and even discuss anything like that.

Mr. SOLLERS. Now, you said you did have the capacity to provide back gauging, but then you also said you had not engaged in back gauging before. Is that true?

Mr. COOK. Well, when I said the capacity, I think with what we found, and what we feel is occurring out there, it would not take very much beyond what we have in place already to go ahead and introduce something like this. I think we could meet that demand if we had to.

Mr. SOLLERS. Do you plan to introduce a back gauging or production verification program?

Mr. NORMAN. Mr. Sollers, may I comment on that?

Mr. SOLLERS. Certainly, Mr. Norman.

Mr. NORMAN. The Southern Ute Reservation is almost exclusively a gas producing area. So, their oil production is very, very limited. For the reasons I mentioned in the opening, it is very difficult or impossible, as we know it, to back gauge gas, so that may——

Mr. SOLLERS. Or oil, is that true?

Mr. NORMAN. Oil, as we know, is somewhat easier to back gauge. But the Southern Utes really do not have a need for that.

Mr. SOLLERS. Because there is such low oil production on the Southern Ute, is that true?

Mr. NORMAN. Yes, sir.

Mr. SOLLERS. But as to a production verification program on gas, do you plan to institute such a program, similar to the program that was conducted in cooperation with our committee? Would that be feasible—put it that way?

Mr. COOK. I believe, in recognition of the problems that we see in this particular area, as I said earlier—and I maybe misunderstood you in regard to the back gauging—I was looking specifically at gas wells, and not oil wells.

Using that as something similar to witnessing or calibrations on meters—as I stated earlier, I do not think we would have a problem in instituting a program like that. But it takes money, and we do not have that money.

Mr. SOLLERS. And production verification of gas wells is very difficult, is that true?

Mr. COOK. Yes; it is an ongoing thing. It is a 24-hour thing.

Mr. SOLLERS. And you need access to the documents, which really are the meter readings, and those are in the possession of the purchasers, is that also true?

Mr. COOK. True.

Mr. SOLLERS. That concludes my questions, Mr. Chairman.

Senator DECONCINI. Thank you, Mr. Sollers.

Mr. Norman, when you talk about production verification programs regarding natural gas, do you know what the industry does?

Mr. NORMAN. Yes; I think I can comment on that.

Typically, gas producers who sell to gas purchasers will periodically request and witness the actual calibration of the meter onsite. Of course, they have the personnel with the expertise there,

able to perform that function, and in nearly every case, as we now know, that is not available to Indian Tribes.

Senator DECONCINI. How often?

Mr. NORMAN. Oh, typically three or four times a year.

Senator DECONCINI. On a random basis, I presume?

Mr. NORMAN. Yes, sir.

Senator DECONCINI. Now, when they do that, they really are checking the instruments? Is that what they are really checking?

Mr. NORMAN. Well, they can check a couple of things. The integrity of the instrument—over time, these things can be expected to get out of synch somewhat. So, these inspections do bear from fruit.

The next thing they can do, and an option they do exercise, is to take that chart—it is a round chart, about the size of a record—and re-integrate it on their own equipment. Again, that is a capability that is not available to tribes.

Senator DECONCINI. Excuse my maybe elementary questions here, but I really do not know anything about gas production. So could you show me that chart? Does that chart show the gauging instrument that records the amount of gas?

Mr. NORMAN. Yes, Senator; that is correct.

Senator DECONCINI. Now, that chart is where the meter reader, so to speak, would read to make the determination how much gas there was?

Mr. NORMAN. Yes, Senator, that is correct.

Senator DECONCINI. And then pay a royalty based on that?

Mr. NORMAN. Yes, sir.

Senator DECONCINI. So you can go to that chart, pull that out, and put that back through the process to see whether or not what the meter reader recorded is the same thing that was actually on the chart?

Mr. NORMAN. That is right.

Senator DECONCINI. Okay, and that is what these inspections or verification programs would do?

Mr. NORMAN. They would make that conclusion as well as concluding—and they must do this—they must also determine that the equipment, the meter, is actually functioning properly, because if it is not, you are going to get bad data on this chart. So it is a two-pronged approach.

Senator DECONCINI. Now, is there an industry standard for maintaining these meters, or for inspecting and serving them?

Mr. NORMAN. I am informed that the generally accepted industry standard is a tolerance of approximately 2 percent accuracy.

Senator DECONCINI. And then you testified, as you did, Mr. Cook, that on the Ute Indian Reservation, and you, Mr. Norman, on your sampling of other reservations that have gas, that there is no such inspection, is that correct? Or no verification program at all?

Mr. NORMAN. Well, the Tribes do not have typically the funding or the expertise, and our investigation over the past year has indicated that the BLM simply is not doing it.

Senator DECONCINI. And do you know if the BLM has the capabilities to do it?

Mr. NORMAN. I think there are offices that simply do not have the capability to do it, and it is hard to distinguish, when they are

not doing it at all, whether it is a lack of capability or a lack of motivation.

We did ask for a copy of meter calibration inspection records from the Durango BLM office, and they replied that such records do not exist. Whether that is lack of expertise or lack of motivation, I am not sure.

Senator DECONCINI. Was there any question in BLM's mind that they had the jurisdiction and the responsibility to do this?

Mr. NORMAN. There is no question about that, Senator.

Senator DECONCINI. And where is that borne out? Do you know? Is that statute, or some rule, or regulation, or maybe I should ask——

Mr. NORMAN. I cannot cite it now.

Senator DECONCINI. But you have seen it?

Mr. NORMAN. Yes, sir.

Senator DECONCINI. In the course of the investigation by our committee, you have examined that information?

Mr. NORMAN. Yes, sir; absolutely.

Senator DECONCINI. I would like to have that inserted in the record in due course, as to the history or the legislation or rules, or what have you, that actually gives the BLM this responsibility.

I have no further questions.

Senator MCCAIN. I have no questions.

Senator DECONCINI. I thank you gentlemen very much for your very helpful information.

We are now going to hear from Walter Johnson, Chief, Law Enforcement Division, Bureau of Land Management.

Mr. Johnson, would you come forward, please?

STATEMENT OF WALTER JOHNSON, CHIEF, LAW ENFORCEMENT DIVISION, BUREAU OF LAND MANAGEMENT

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. SOLLERS. Good morning, Mr. Johnson.

Mr. JOHNSON. Good morning.

Mr. SOLLERS. Please state your full name for the record.

Mr. JOHNSON. Walter I. Johnson, Jr.

Mr. SOLLERS. And what is your current position with BLM?

Mr. JOHNSON. I am the chief of Law Enforcement and Resource Protection Operations with the Bureau.

Mr. SOLLERS. How long have you been the chief of law enforcement at BLM?

Mr. JOHNSON. Since 1984.

Mr. SOLLERS. What are your duties there?

Mr. JOHNSON. As the chief of law enforcement, I am responsible for the promulgation of regulations and operations of the Bureau with respect to the policies in our operations of law enforcement.

Mr. SOLLERS. Do you basically have oversight of all BLM law enforcement?

Mr. JOHNSON. That is correct.

Mr. SOLLERS. What is your prior law enforcement experience?

Mr. JOHNSON. I spent 8 years with the Washington, DC police department. After that, I went to a small town in Maryland by the name of Edmonston, where I was chief for 2 years. After that, I

spent 3 years with the Office of Surface Mining, directing their investigative activities.

I have been with the BLM now for five years.

Mr. SOLLERS. And you are the chief law enforcement officer for BLM, and I take it you are based in D.C.?

Mr. JOHNSON. I am, sir.

Mr. SOLLERS. Now, do you have line authority?

Mr. JOHNSON. No, sir, I do not. I have staff authority.

Mr. SOLLERS. What is line authority?

Mr. JOHNSON. Line authority with respect to our department manual is that a professional law enforcement administrator would exist within each bureau, with the responsibility for bureau-wide direction, staff supervision and formation of operational procedures and policy.

Mr. SOLLERS. So, in other words, you do not have line authority. Do you have direct supervisory authority over your various field officers?

Mr. JOHNSON. I do not.

Mr. SOLLERS. So in other words, Mr. Tunnell, who is sitting behind you from Santa Fe, he is your special-agent-in-charge in New Mexico, is that true?

Mr. JOHNSON. That is correct.

Mr. SOLLERS. And do you have authority to give him a direct order?

Mr. JOHNSON. I do not.

Mr. SOLLERS. Why do you not have this line authority? Would it not make sense?

Mr. JOHNSON. Yes; yet the policy has been established that our 12 State directors are the ones that have the authority over those agents.

Mr. SOLLERS. Is there a problem in consistency in law enforcement among the various BLM areas?

Mr. JOHNSON. At times there are, sir.

Mr. SOLLERS. Why don't you give a brief overview of how BLM law enforcement is set up? I think that you have already said that you have 12 different offices—is that true?

Mr. JOHNSON. That is correct.

Each of those 12 offices has a special-agent-in-charge, who, as I said, reports directly to the State director.

There are a number of special agents, totalling 36 nationally, who report directly to the special agents in charge.

Mr. SOLLERS. BLM Law Enforcement has a total of 36 special agents, is that correct?

Mr. JOHNSON. That is correct.

Mr. SOLLERS. You cover lands of what magnitude?

Mr. JOHNSON. Lands approximate, as I am told, about 290 million surface acres, and then an additional approximately of 300 million sub-surface acres.

Mr. SOLLERS. And what are your substantive areas of concentration? In other words, you have jurisdiction over what matters?

Mr. JOHNSON. With respect to our delegation, we carry out the responsibility of the Secretary to enforce laws upon the public lands with respect to the resources upon those lands.

Specifically, we have a delegation which directs us to enforce all Federal laws and regulations pertaining to the use, management and development of the public lands and their resources.

Mr. SOLLERS. It is safe to say it is a pretty broad mandate, is it not?

Mr. JOHNSON. Yes, sir, it is.

Mr. SOLLERS. And that includes almost 300 million square miles, is that true?

Mr. JOHNSON. That is 300 million surface acres.

Mr. SOLLERS. Okay, acres.

It is a fairly large area?

Mr. JOHNSON. It is, sir.

Mr. SOLLERS. How many of your agents have oil and gas experience?

Mr. JOHNSON. A poll of our agents taken last week indicates that we have five agents who could in fact conduct an oil and gas investigation from start to finish.

Mr. SOLLERS. And in fact, how many agents had any oil and gas experience before coming to BLM?

Mr. JOHNSON. Specifically, two agents that I am aware of.

Mr. SOLLERS. One of them is Mr. Tunnell?

Mr. JOHNSON. Yes, Mr. Tunnell is one.

Mr. SOLLERS. Who is the other individual?

Mr. JOHNSON. Special-agent-in-charge, Morris Bullard, who is assigned to Wyoming.

Mr. SOLLERS. Now, what is BLM's law enforcement authority on Indian land?

Mr. JOHNSON. We have no authority that I am aware of on Indian lands.

Mr. SOLLERS. Do you have statutory authority?

Mr. JOHNSON. Not on those Indian lands, no, sir.

Mr. SOLLERS. Has there ever been a promulgation of a law which indicated that you could have statutory authority, and not delegated authority?

Mr. JOHNSON. I have discussed the matter with our solicitor's office, and the solicitor's office in fact states that should the Secretary so decide, he could in fact delegate that responsibility to us, with respect to Indian lands.

Mr. SOLLERS. All right, let us try to understand this, because it is a little confusing to me.

Is there a statute in place which allows for BLM law enforcement to have authority to go in on Indian land, let us say, with regard to an oil and gas matter?

Mr. JOHNSON. No; and with respect to that, I should back up to——

Senator DECONCINI. The answer is no?

Mr. JOHNSON. That is correct, sir.

Senator DECONCINI. There is no statutory——

Mr. JOHNSON. None, Mr. Chairman.

Senator DECONCINI. And none that could be delegated?

Mr. JOHNSON. It could in fact be delegated, since the Secretary has the responsibility for those lands.

Senator DECONCINI. Excuse me, Mr. Sollers.

Then as I understand it, the Secretary has statutory authority and the Secretary could delegate that statutory authority to the BLM?

Mr. JOHNSON. Yes; he could.

Senator DECONCINI. And that is exactly where Mr. Sollers was going.

Mr. JOHNSON. Yes, sir.

Mr. SOLLERS. So there is a statute in place which would allow the Secretary to delegate law enforcement authority, true?

Mr. JOHNSON. That is correct, sir.

Mr. SOLLERS. And we are talking about Indian land, specifically about oil and gas matters.

Mr. JOHNSON. Yes.

Mr. SOLLERS. But there has been no delegation of this authority?

Mr. JOHNSON. There has not.

Mr. SOLLERS. Now, how long has the statutory authority been in place for the Secretary, so that he could, in fact, delegate law enforcement authority, to your knowledge?

Mr. JOHNSON. Specifically, I would look at the Federal Oil and Gas Royalty Management Act.

Mr. SOLLERS. The acronym for which is FOGRMA?

Mr. JOHNSON. Yes, sir, with respect to the oil and gas, as we were speaking—and that is January 1983, the Act of 1982.

Mr. SOLLERS. So at least since 1982, there has been a statute in place which would allow the delegation of law enforcement authority on Indian land to your group, is that true?

Mr. JOHNSON. As I understand it, yes.

Mr. SOLLERS. BLM Inspection, on the other hand—another division in BLM—has authority over Indian land. Is that true?

Mr. JOHNSON. That is my understanding, sir.

Mr. SOLLERS. In fact, they are the watchdogs who are supposed to be overseeing Indian oil and gas royalties, is that true?

Mr. JOHNSON. That is my understanding with respect to the inspection and enforcement.

Mr. SOLLERS. It is called inspection and enforcement, correct?

Mr. JOHNSON. Yes, sir.

Mr. SOLLERS. But in fact, you are the law enforcement law. BLM really does not have any law enforcement capacity on Indian land. Is that right?

Mr. JOHNSON. You are correct, sir.

Mr. SOLLERS. What——

Senator DECONCINI. Excuse me, Mr. Sollers.

From what I understand, we said that there is no statutory authority for BLM to do anything on Indian land, and yet——

Mr. JOHNSON. That is correct, sir.

Senator DECONCINI [continuing]. You say that BLM Inspection, which to me is BLM, though it may be a separate division, does have statutory authority on Indian land?

Mr. JOHNSON. That is my understanding.

If I may back up, Mr. Chairman——

Senator DECONCINI. Maybe you could explain the difference between BLM law enforcement division and BLM inspection, and if there is a statutory authority to one of them, how you can conclude that BLM does not have statutory authority.

Mr. JOHNSON. Specifically, sir, if I go back to the public law which is the Federal Land Policy and Management Act of 1976, which in fact authorizes the Secretary to have law enforcement on the public lands—that is where we derive our law enforcement authority.

The term "public lands" specifically excludes Indian lands.

With respect to FOGRMA——

Mr. SOLLERS. So you were talking about your law enforcement authority, is that true?

Mr. JOHNSON. That is correct, and that is what I am focusing on, separate from FOGRMA.

Mr. SOLLERS. And FOGRMA would give direction to your inspection group?

Mr. JOHNSON. Yes, as I understand it.

Senator DECONCINI. That is a separate group?

Mr. JOHNSON. That is correct.

Senator DECONCINI. And can you cite that for us?

Mr. JOHNSON. I will try to, sir. I am not an expert on it.

Senator DECONCINI. Just when it passed, or what it is the public law. Maybe we can get that on the record.

Mr. JOHNSON. It is the Federal Oil and Gas Royalty Management Act of 1982.

Senator DECONCINI. Of 1982. That specifically gave the Inspection Division of BLM authority on Indian land, is that your understanding?

Mr. JOHNSON. If I may reference this for a moment, Mr. Chairman?

Senator DECONCINI. Yes, take your time.

Mr. JOHNSON. It is my understanding that they would, with respect to FOGRMA, be authorized and as properly identified representatives of the Secretary, inspect at least once annually each lease site.

Mr. SOLLERS. Just so we try to make this clear, BLM has kept very separate and distinct its inspection arm and its law enforcement arm, is that correct?

Mr. JOHNSON. Generally speaking, that is correct.

Mr. SOLLERS. There really is no marriage or relationship, at least formally, between the inspectors, who are out in the field looking at the oil and gas leases, and the law enforcement group, is that true?

Mr. JOHNSON. There is cooperation in the sense that we started with a pilot project in 1986, but that pilot project, as I understand it, is no longer in effect, and with the exception of informal reporting from I&E personnel to Law Enforcement personnel, and formal reporting within only one State, which is New Mexico—that State director has in fact implemented it—I am not aware of any other system.

Mr. SOLLERS. When we talk about I&E, we are talking about your inspection group?

Mr. JOHNSON. Again, separate from law enforcement.

Mr. SOLLERS. We are not trying to hang you out to dry here, Mr. Johnson. I think it is very confusing, and it is not a situation where you really have any control.

But is it not the case that at a policy level—and we are talking about at the top of BLM—there has been no direction and no policy promulgation to allow the inspectors—the guys who are out in the field looking at the leases—to report theft problems to the Law Enforcement group?

Mr. JOHNSON. With the exception of the pilot program——

Mr. SOLLERS. And that pilot program has lapsed, has it not?

Mr. JOHNSON [continuing]. I am not aware of a specific program in place at this time.

Mr. SOLLERS. And the pilot program has lapsed, has it not?

Mr. JOHNSON. That is also my understanding.

Senator DECONCINI. Excuse me, Mr. Sollers.

So that I understand this, Mr. Johnson, the 36 law enforcement special agents that you have under your jurisdiction do not have authority on Indian land. They do not in fact report what they might consider violations or inappropriate action regarding anything on Indian land?

Mr. JOHNSON. That is correct, sir.

Senator DECONCINI. Whether it has to do with oil or anything else?

Mr. JOHNSON. That is correct, Mr. Chairman, on Indian lands.

Senator DECONCINI. On Indian lands.

OK. Maybe Mr. Sollers is going to get into the Inspection Division later.

Mr. SOLLERS. We have several witnesses from Inspection this afternoon, Mr. Chairman.

Senator DECONCINI. Thank you. Excuse me.

Mr. SOLLERS. But it is your understanding that BLM has trust responsibility, or at least at the inspection function, on Indian land for oil and gas leases?

Mr. JOHNSON. That is my understanding.

Mr. SOLLERS. But that trust responsibility has not been delegated to the law enforcement group?

Mr. JOHNSON. On Indian lands, correct.

Mr. SOLLERS. Right.

So, if a BLM inspector came back and said, there is someone stealing the heck out of this oil lease on Indian land, to whom does he report it?

Mr. JOHNSON. I would have to go back to the policy that was set in the pilot program, and that policy in fact set forth that it would be reported to the BIA or to the Tribe, for their investigation.

Mr. SOLLERS. But it would not be reported to BLM law enforcement?

Mr. JOHNSON. Not to my knowledge.

Mr. SOLLERS. Because you all do not have delegated authority to do anything about it, even if it was reported to you?

Mr. JOHNSON. If in fact it were reported to us, we could then report it to another agency, specifically the BIA.

Mr. SOLLERS. Are you aware of any instances where BLM inspectors have reported to BLM law enforcement possible oil and gas theft on Indian land?

Mr. JOHNSON. I am not personally aware.

If I may, I would like to make one thing very clear there.

Mr. SOLLERS. Sure.

Mr. JOHNSON. That were BLM agents to become aware that any violation of law existed, we would not overlook it; meaning specifically, if we had no delegation, we would in fact get it to the appropriate agency.

Senator DECONCINI. Excuse me, Mr. Sollers.

What would you do with a hypothetical case where one of your BLM law enforcement agents was told by someone in the oil and gas business, or an allottee, or someone on the Indian reservation that they felt that over at Well 62B, or whatever it was called, somebody was stealing oil by not measuring it correctly, and that they had heard that kind of information at the local saloon, or the local PTA meeting, or something.

What would one of your agents do with that kind of information, assuming that they thought it was a credible source to begin with?

Mr. JOHNSON. Well, if I may, sir, starting with myself, if I became aware, I would report it to the Chief of Law Enforcement in BIA, who is in Washington—my counterpart.

Were it to occur in the field, it is our policy to report to the agency with the jurisdiction, and I can—we have not had, to my knowledge, any reporting of said violations.

I could only make an assumption, Mr. Chairman, that they would report it as they do with all other violations.

Senator DECONCINI. So you would go to BIA Law Enforcement, vis-a-vis, say, going to the FBI?

Mr. JOHNSON. Those agents may well go to the FBI.

Senator DECONCINI. But you would go to BIA law enforcement?

Mr. JOHNSON. I would, sir.

Senator DECONCINI. With whatever information you had, or reports you had?

Mr. JOHNSON. Yes, Mr. Chairman.

Senator DECONCINI. Have you ever done that?

Mr. JOHNSON. No; because I have not received any information.

Senator DECONCINI. And none of your agents have, to your knowledge?

Mr. JOHNSON. I am not aware of any. If, in fact, I became aware, and the BIA did not in fact take the case, I would report it to the FBI.

Senator MCCAIN. May I interrupt?

Senator DECONCINI. Certainly.

Senator MCCAIN. Why do you think it is that you have never received any allegations, or reports?

Mr. JOHNSON. Senator, that is a difficult question.

That would only be an opinion of my own.

Senator MCCAIN. Could you give us your personal opinion?

Mr. JOHNSON. Well, stressing that it is my personal opinion, and hearing and reading the things that I have heard, that information has just not been either captured, or once it has been, it has not been reported in furtherance of any responsibility someone might have, outside of law enforcement.

Senator MCCAIN. Thank you.

Mr. SOLLERS. Mr. Johnson, has BLM made it a priority to identify theft on oil and gas leases on Indian land?

Mr. JOHNSON. I can specifically speak to law enforcement, and it has not, because we do not have the delegation.

It is a priority in our formulation of thrust and efforts for BLM law enforcement to look on the public lands where we do have jurisdiction.

Mr. SOLLERS. But not on the Indian land?

Mr. JOHNSON. Not on the Indian land.

Mr. SOLLERS. Now, with regard to BLM inspection, however, are you aware of whether or not that group—the group that is out there every day on the Indian land—whether they have made it a priority to identify theft?

Mr. JOHNSON. I do not have information which would—that I could specifically state.

Mr. SOLLERS. Now, is there a solicitor's memo which states that BLM law enforcement could be called on the Indian land, if asked to do so by another Interior agency?

Mr. JOHNSON. There is in fact one, sir.

Mr. SOLLERS. What agencies could call BLM law enforcement onto Indian land, if they chose to do so?

Mr. JOHNSON. Specifically, as that solicitor's memo reads, as I recall it, the content was that the Assistant Secretary for Policy, Budget and Administration in fact could call upon any law enforcement entity of the Department of Interior to go onto other department lands and conduct law enforcement activities.

Mr. SOLLERS. We would like to get a copy for the record of that memorandum of understanding, if we could, Mr. Johnson.

Mr. JOHNSON. I will do that, Mr. Chairman.

[Memorandum appears in appendix.]

Mr. SOLLERS. Has BLM law enforcement ever been called onto Indian land by another Interior agency—and we are talking about MMS or BIA?

Mr. JOHNSON. I am not aware of that.

Mr. SOLLERS. What agency does have jurisdiction over oil theft on Indian land, if you know?

Mr. JOHNSON. My only understanding has been that since we did not have the authority, that BIA did, or the FBI.

Mr. SOLLERS. Are you aware of whether BIA has made any cases on oil theft on Indian land?

Mr. JOHNSON. I am not aware of that.

Mr. SOLLERS. Are you aware of whether BIA even has any experts in oil and gas, that they could put on a case such as that?

Mr. JOHNSON. I am not aware of any. I have discussed the matter with the Chief of Law Enforcement in BIA. I have also suggested a mutual training program to train BIA investigators as well as our own, if that was necessary.

Mr. SOLLERS. Are you referring to Mr. Donovan as the Chief of Law Enforcement at BIA?

Mr. JOHNSON. That is correct, Mr. James Donovan.

Mr. SOLLERS. And when you discussed the matter with him, did he indicate that they had handled any oil and gas cases on Indian land?

Mr. JOHNSON. He did not.

Mr. SOLLERS. Did he indicate one way or the other? Did he say they have not handled any, or you just did not talk about it?

Mr. JOHNSON. He did not indicate either way.

Mr. SOLLERS. Did he indicate whether they had the expertise to handle such a case?

Mr. JOHNSON. He did not.

He did not indicate they did or did not.

Mr. SOLLERS. Did he indicate an interest in handling any such cases?

Mr. JOHNSON. He was receptive to the idea that BIA take that responsibility upon themselves.

Mr. SOLLERS. Did you get the impression that they would handle any such cases?

Mr. JOHNSON. I did not get that impression.

Mr. SOLLERS. Has MMS ever reported any cases of oil and gas theft on Indian land to you?

Mr. JOHNSON. Not directly to me, sir.

Mr. SOLLERS. Are they supposed to?

Mr. JOHNSON. Not on Indian land.

Mr. SOLLERS. MMS has custody of all the documents, basically, which relate to production of oil and gas on Indian land, correct? As far as there being an agency in Interior as a repository of documents, it is MMS, is that correct?

Mr. JOHNSON. That is correct.

Mr. SOLLERS. So, if a pattern of theft was to be discerned from the documents, it is going to be by MMS, is that true?

Mr. JOHNSON. That would be my understanding.

Mr. SOLLERS. Is there any policy or procedure by which MMS would come to BLM and say, "Hey, look, we've got a problem on these leases. There seems to be a pattern of theft"?

Mr. JOHNSON. I am not aware of one on Indian lands.

Mr. SOLLERS. And MMS has never referred any such cases, true?

Mr. JOHNSON. On Indian lands?

Mr. SOLLERS. Correct.

Mr. JOHNSON. I am not aware.

Mr. SOLLERS. Have they referred any such cases on Federal land?

Mr. JOHNSON. It is my understanding that we have received information pursuant to a memorandum of understanding that we have on Federal lands—those lands other than Indian lands—that we have received some information.

The specifics I could not give you, because that occurred in the field, at the special-agent-in-charge level.

Mr. SOLLERS. Is it fair to say there is not a lot of interaction among the agencies within the Department of Interior—I am talking about MMS, BIA, and BLM?

Mr. JOHNSON. Of late, there has been a fair amount of interaction.

Mr. SOLLERS. And what has occasioned that?

Mr. JOHNSON. What has occasioned that has been that BLM agents and law enforcement, in its attempt to conduct investigations on Federal leases, other than Indian leases, has come into contact with our Inspector General's office, specifically in a situation where because there has not been a clear understanding of responsibility, there has been some confusion as to who has responsibility for investigations.

Mr. SOLLERS. This is the Department of Interior Inspector General's office, correct?

Mr. JOHNSON. That is correct.

Mr. SOLLERS. And in fact, there was such a conflict that the IG threatened to arrest one of your agents, is that true?

Mr. JOHNSON. Or otherwise place charges against him, if he did not give the contents of an investigative file to their agent.

Mr. SOLLERS. Is there a substantial amount of turf battling going on among the agencies within Interior?

Mr. JOHNSON. There has been disagreement over responsibility with respect to this particular instance—oil and gas investigations.

Mr. SOLLERS. Have there been other instances where there has been conflict between the agencies, from a law enforcement standpoint?

Mr. JOHNSON. With respect to regulatory program investigations, there has been some.

Mr. SOLLERS. There has not been any clear policy guidelines delivered from the top people at DOI, have there?

Mr. JOHNSON. I am not aware of specific guidance that would clarify that.

Mr. SOLLERS. Is there a jealous guarding of information among the various agencies at DOI?

Mr. JOHNSON. I do not know that one would clarify or be able to clarify that in the way that you have said it, sir.

Mr. SOLLERS. Is there the free exchange of information among the various agencies at DOI?

Mr. JOHNSON. There has certainly been an exchange, but we have been attempting to work that out, through consultation with our solicitor's office, and request specifically—I am putting a paper together requesting clarification, so that we might end any confusion which exists between the relevant parties.

Mr. SOLLERS. And the confusion is substantial, is that correct?

Mr. JOHNSON. I do not know that I would go that far, to say substantial. It certainly is not clear.

Mr. SOLLERS. All right.

Senator DECONCINI. Substantial? I would say it is greater, Mr. Johnson, and I do not say that critically of you and your 36 fine agents.

Excuse me for interrupting you, but God, this is so confusing. I have some questions I will ask you later on some of your other investigations.

Go ahead.

Mr. SOLLERS. Mr. Johnson, does any Interior law enforcement agency have the capacity for competent law enforcement of oil and gas theft on Indian land?

Mr. JOHNSON. I am not aware of an agency that has the resources to do that.

Mr. SOLLERS. Let us say BLM finally had the delegated authority—your law enforcement group, after these many years, has had the delegated authority to handle oil and gas theft on Indian land.

Could you handle it competently?

Mr. JOHNSON. Not at this time, sir.

Mr. SOLLERS. You have got 36 agents nationwide, correct?

Mr. JOHNSON. That is correct.

Mr. SOLLERS. And based on my contact with Mr. Tunnell and you, I think they are very good agents.

Mr. JOHNSON. Thank you.

Mr. SOLLERS. But it would be pretty tough to cover the entirety of Indian lands, in addition to your various other matters, correct?

Mr. JOHNSON. Most difficult.

Mr. SOLLERS. And that is something we have not talked about.

A big priority for you all now is drug interdiction, is it not?

Mr. JOHNSON. Our priorities include that, as well as archeological thefts and oil and gas theft and other unauthorized uses of the public lands.

Mr. SOLLERS. Archeological theft meaning artifacts, etc.?

Mr. JOHNSON. Yes, cultural resources.

Mr. SOLLERS. And that in fact takes a fair amount of your time, is that true?

Mr. JOHNSON. It does.

Mr. SOLLERS. Drug interdiction is a big priority, though, is it not?

Mr. JOHNSON. The Administration is looking forward to a cohesive, cooperative Federal effort, and we are a part of that effort, and we will do our best.

Senator DECONCINI. Is that a yes?

Mr. JOHNSON. Mr. Chairman?

Senator DECONCINI. Is that a yes?

Mr. JOHNSON. It is a yes.

Senator DECONCINI. Thank you.

Mr. JOHNSON. I will be more clear, Mr. Chairman.

Mr. SOLLERS. And indeed, some of your offices spend a great deal of their time on actual marijuana eradication?

Mr. JOHNSON. They do.

Mr. SOLLERS. Cutting marijuana weeds down, is that true?

Mr. JOHNSON. That is correct.

Mr. SOLLERS. Because that is pervasive now on Federal lands—a big area for the growth of marijuana?

Mr. JOHNSON. It is.

If I may clarify, Mr. Chairman, I am not trying to be evasive in any way. What I am trying to say, I guess, is that we do not want to be a little DEA. We are not trying to become such.

It is a priority within the Administration, and we will address that as well as oil theft and cultural resource violations to our best.

Mr. SOLLERS. All I am trying to establish is that it is taking a fair amount of your manpower, in the drug effort.

Mr. JOHNSON. Distinctly, yes.

Mr. SOLLERS. Now, how about BIA? We have already talked about it.

Do they have the manpower and expertise to handle oil and gas theft on Indian lands?

Mr. JOHNSON. They may have the manpower. But I am not aware of the expertise, and I would certainly want BIA to answer that question.

Mr. SOLLERS. Fair enough.

How about MMS? What is their law enforcement capacity?

Mr. JOHNSON. I am only aware of a civil side to the enforcement operations of MMS, not a criminal enforcement side.

Mr. SOLLERS. MMS has no criminal enforcement capacity, really, is that true?

Mr. JOHNSON. None that I am aware of.

Mr. SOLLERS. But MMS is the repository for all the documents that would indicate a pattern in practice of theft?

Mr. JOHNSON. That is certainly my understanding.

Mr. SOLLERS. And MMS jealously guards that information, is that not also true?

Mr. JOHNSON. That would require a conclusion on my part.

Mr. SOLLERS. Let us put it this way—MMS does not really distribute that information to you, do they?

Mr. JOHNSON. No, sir, and at this point in time, we are even under an MOU, which apparently exists with the IG's office for all requests from our or any source for records with respect to production or sales records from MMS to be cleared through the IG's office before it goes to the respective agency, or the requesting agency.

Mr. SOLLERS. So BLM is going to have to clear any dissemination of information through the IG before they can move it to the appropriate agency, is that correct?

Mr. JOHNSON. That is the policy as I understand it from MMS.

Mr. SOLLERS. So, it is your understanding that only BIA has the delegated authority to provide any law enforcement, is that correct?

Mr. JOHNSON. Delegated authority on the BIA lands, correct.

Mr. SOLLERS. Now, Mr. Johnson, have you made recommendations regarding law enforcement and the delegation of authority on Indian land?

Mr. JOHNSON. In conjunction with the Inspection and Enforcement Division, in 1985, I made certain recommendations.

The recommendations included a more complex or more comprehensive investigating process of all thefts of product, and also including a reporting procedure to report any suspected or known thefts of product to appropriate law enforcement agency.

Mr. SOLLERS. And those reporting procedures have never formally been put in place, is that true?

Mr. JOHNSON. The policy that was established as a result of my recommendations resulted in the pilot program, of which I spoke earlier.

Mr. SOLLERS. And that pilot program has lapsed?

Mr. JOHNSON. To my understanding, yes.

Mr. SOLLERS. And there has never been any formal procedure for BLM inspection to report suspected oil and gas theft to BLM law enforcement, other than the defunct pilot program?

Mr. JOHNSON. With one exception.

Mr. SOLLERS. Okay, what is that?

Mr. JOHNSON. That was the New Mexico State reporting program, which I understand is a derivation of the program that started in the pilot project, which was then continued by our current State Director.

Mr. SOLLERS. The rest of the country has no reporting procedure in place for inspection to report to law enforcement?

Mr. JOHNSON. There are informal procedures established within the States.

I am aware that there is interchange and exchange of information in Wyoming and Montana.

Mr. SOLLERS. On an informal basis?

Mr. JOHNSON. Yes.

Mr. SOLLERS. Are you aware of this committee's finding on purchaser oil theft?

Mr. JOHNSON. I have been reading the newspapers.

Mr. SOLLERS. BLM does not have the capacity to detect theft such as that, does it?

Mr. JOHNSON. The types of information that the gentleman preceding me this morning spoke of—it is my understanding that would have to come from MMS, or any circumstance that our Inspection and Enforcement personnel found with respect to tampering with any meters.

Mr. SOLLERS. The bottom line is the more sophisticated types of oil and gas theft BLM is not currently in a position to detect, is that your understanding?

Mr. JOHNSON. It is my understanding.

Mr. SOLLERS. And even if BLM did have the procedures to detect, or the capacity to detect such sophisticated types of theft, are there any procedures to report it?

Mr. JOHNSON. Not in place at this time.

Mr. SOLLERS. And even if it was reported to BLM law enforcement, BLM law enforcement, if it had a delegated authority, would not have the capacity to pursue it?

Mr. JOHNSON. We would have to place it in priority with all other investigations.

Mr. SOLLERS. Mr. Chairman, that concludes my questions.

Senator DECONCINI. Senator McCain, do you have questions?

Senator MCCAIN. No questions.

Senator DECONCINI. Thank you, Mr. Johnson.

Mr. Johnson, again I appreciate your participation here, and as Mr. Sollers said, we are not here to hang you out, or to embarrass you in any way. It is information that I am interested in.

When you talked about your law enforcement agents—and by the way, I know a couple of them who have served in Arizona, and they are very fine, competent people—you said that you are involved in drug enforcement, and it is not your intention to be the DEA. You do work with the DEA, do you not?

Mr. JOHNSON. Absolutely, Mr. Chairman. That is our primary contact and point of coordination.

Senator DECONCINI. And in fact they do a lot of the criminal investigation for you, is that correct?

Mr. JOHNSON. Yes, Mr. Chairman.

Senator DECONCINI. And about how many acres of marijuana have you been able to confiscate, say, in the last 12 months, or in 1988? Do you have those figures?

Mr. JOHNSON. I can reference the total number of plants that were seized, if you can give me a moment.

Senator DECONCINI. Yes, sir.

Mr. JOHNSON. Mr. Chairman, the total number of plants which were seized in 1988 was 24,056.

Senator DECONCINI. Is there any particular geographic area that most of that came from?

Mr. JOHNSON. Yes, Mr. Chairman, there is.

Senator DECONCINI. California?

Mr. JOHNSON. California and Oregon.

Senator DECONCINI. Thank you.

Mr. JOHNSON. You are welcome, sir.

Senator DECONCINI. I also want to go back to the question that Mr. Sollers pursued with BIA or the FBI, that had jurisdiction over Indian lands, where you made some suggestions. What did you suggest to the BIA law enforcement or the FBI relating to your non-statutory authority or delegation?

Mr. JOHNSON. My suggestion to the BIA was in fact that since we did have a pilot program that included language that the BIA or Tribal Police were in fact to do the investigations on those lands, that the BIA, specifically talking to Mr. Donovan, should take upon themselves the responsibility through their Assistant Secretary working with the Secretary, to gain such a delegation if they currently do not have it, to conduct those investigations.

Senator DECONCINI. When did you make those recommendations?

Mr. JOHNSON. I have made those recommendations twice. The most recent occasion was about a month ago.

Senator DECONCINI. When was the first time?

Mr. JOHNSON. The first time was approximately—I can only guess right now. It is approximately three years ago.

Senator DECONCINI. Three years ago, and then last month. Did you do those in writing?

Mr. JOHNSON. I did not, Mr. Chairman.

Senator DECONCINI. Just verbal discussion with him?

Mr. JOHNSON. That is correct.

Senator DECONCINI. And what was the answer? What was the response?

Mr. JOHNSON. The most recent response—the previous one, I do not recall at this time—But the most recent is that Mr. Donovan did not see a problem in taking on those investigations, and that he would look into the matter further, and in fact requested some agents in the BLM that he could contact to get a better reference of what was going on, and I did in fact suggest a couple.

Senator DECONCINI. And how would that be put together? Would that be a memorandum of understanding between you? If something was implemented here, how would that physically and logistically be put together? Do you know?

Mr. JOHNSON. Mr. Chairman, my understanding would be that if they currently have the authority, it is a reaffirmation of that authority.

Senator DECONCINI. That is all it would take.

Mr. JOHNSON. And if they do not have the authority, as with us, the Secretary would in fact have to verify that through delegation.

Senator DECONCINI. Now, have you conveyed these problems to your superior? Who is your superior?

Mr. JOHNSON. My superior at this time is a Mr. John Moeller, M-O-E-L-L-E-R.

Senator DECONCINI. And what title does he hold?

Mr. Johnson. He is an acting Assistant Director for Support Services.

Senator DECONCINI. Support Services. And he is directly under the Director of the BLM?

Mr. JOHNSON. That is correct, Mr. Chairman.

Senator DECONCINI. And have you shared these suggestions or recommendations with him?

Mr. JOHNSON. Yes, I have.

Senator DECONCINI. And when did you do that?

Mr. JOHNSON. At about the same point in time—about a month ago.

Senator DECONCINI. A month ago.

Mr. JOHNSON. It may have even been a little longer.

Senator DECONCINI. Had you done that previously also, like you had talked to the BIA law enforcement people?

Mr. JOHNSON. Not to Mr. Moeller, because he has been acting for a short time. I had previously passed on my concerns with respect to clarification of responsibilities.

Senator DECONCINI. And was that orally also, both times?

Mr. JOHNSON. It was.

Senator DECONCINI. And what response did you get?

Mr. JOHNSON. The most recent response was that a group was brought together, which included law enforcement and I&E personnel, as well as people from our Fluid Minerals Division, to discuss interaction with surface management agencies, such as the Forest Service, Indian Affairs, training procedures to cross-train our I&E people with Law Enforcement personnel, and to further clarify reporting procedures.

And there is currently a memorandum which is being, I believe, circulated for surnaming, to go the field to clarify those points.

Senator DECONCINI. Now, you say a group was brought together. Who brought the group together?

Mr. JOHNSON. The group was brought together, I understand, by George Brown, who is our Deputy Assistant Director in Energy and Mineral Resources.

Senator DECONCINI. And who was in the group? Were you in it?

Mr. JOHNSON. I was not. I was called in for a quick summary briefing at the end.

Two of our special agents were there.

Senator DECONCINI. Two of your agents were there?

Mr. JOHNSON. Yes, from the field, and I&E personnel.

Senator DECONCINI. Do you know how many were in the group, total?

Mr. JOHNSON. I could guess that it was about eight. I sat at the table——

Senator DECONCINI. Do you know where they met, or when?

Mr. JOHNSON. They met in Washington, DC, and it was within the last two months.

Senator DECONCINI. And do you know what their findings were? Did they issue anything?

Mr. JOHNSON. That memo is the memo of which I spoke, which I believe is in the surnaming process.

Senator DECONCINI. That solicitor's memo?

Mr. JOHNSON. This was a memo which was developed as the findings of that group, and then submitted to Mr. Brown.

Senator DECONCINI. I see. Have you seen that memo?

Mr. JOHNSON. No, Mr. Chairman.

Senator DECONCINI. Have you asked for it?

Mr. JOHNSON. No.

Senator DECONCINI. How are 36 special agents supposed to enforce the law on 290 million surface acres of land, Mr. Johnson?

Mr. JOHNSON. Well, Mr. Chairman, we have 36 agents. Another part of our policy pursuant to the Federal Land Management Policy Act is that we enter into agreements with State and local agencies to enforce the laws of those States or political subdivisions.

But with respect to the enforcement, we have our 36 agents. We have 70 law enforcement agreements currently.

Senator DECONCINI. And these are to enforce the State laws?

Mr. JOHNSON. State and local ordinances on the public lands.

Senator DECONCINI. On the public lands. So these are agreements in Arizona that you would make with Coconino County, or the State of Arizona to enforce their laws on the BLM land, or the Department of Public Safety?

Mr. JOHNSON. That is correct.

Senator DECONCINI. So you enforce their laws on your land, is that right?

Mr. JOHNSON. We do not, but they do. We are the Federal enforcers, along with the FBI.

Senator DECONCINI. So the answer to my question is that you really cannot enforce the laws yourself. You have to do it through these agreements.

Mr. JOHNSON. The difficulty, Mr. Chairman, is that while we can bring the State and locals into play on the public lands, they do not enforce Federal law. And if we are speaking specifically about Federal law here, and the lease responsibilities—they are of little help.

Senator DECONCINI. Yes, we have two sets of laws.

Mr. JOHNSON. That is correct, Mr. Chairman.

Senator DECONCINI. And there is a criminal violation which is also a State violation, because of your agreement, then the State or the local law enforcement will enforce that?

Mr. JOHNSON. That is correct.

Senator DECONCINI. Which means they have authority to arrest and take them to their prosecutor for prosecution, if they so elect, and you go along with that.

Mr. JOHNSON. That is correct.

Senator DECONCINI. Do you review those cases, or are those just pretty much——

Mr. JOHNSON. Through the cooperative agreements that we have, we do, yes. They are administered by the Special-Agent-in-Charge.

Senator DECONCINI. So now coming to the Federal side of it, if there are Federal laws that are violated, only you can do that. You do not cross-deputize them to enforce the Federal laws?

Mr. JOHNSON. We do not, sir.

Senator DECONCINI. Can you do that?

Mr. JOHNSON. We could by way of a contract.

Senator DECONCINI. That is what I thought.

Mr. JOHNSON. But that contract requires us to give them the same training as our personnel, and that has not, in the past, been well received by the local authorities.

Senator DECONCINI. So in essence for all of the Federal laws on 290 million acres, you have 36 people to enforce those laws?

Mr. JOHNSON. That is correct.

Senator DECONCINI. So my question is, can you do that with 36 people?

Mr. JOHNSON. No, Mr. Chairman.

Senator DECONCINI. Have you made any assessments, Mr. Johnson, of how many people you would need to adequately enforce the Federal laws on 290 million acres of land that you are charged with?

Mr. JOHNSON. Specifically, no.

Senator DECONCINI. No one has ever asked you to do that? Would you have a guess, or any estimations of—I mean, have you ever thought about it? Boy, if I could have a police force that could really do the job here, and I am talking about all the areas of jurisdiction, not the ones that have not been delegated to you yet—all the ones that you have now.

Do you have any idea? It seems to me that it would take a pretty big force.

Mr. JOHNSON. I guess the agency, if I may compare one, that I have looked at, is perhaps best described as the Forest Service, and I believe they have about 208 special agents to cover approximately 196 million acres. That is about two- thirds of our land surface.

Senator DECONCINI. Two-thirds, they have?

Mr. JOHNSON. And as I understand it, they do not have any of the minerals responsibility, which we would have on their lands, it being a Federal lease.

Senator DECONCINI. Now again, Mr. Johnson, not to put you into any kind of embarrassing situation, have you asked for more agents in the budget request?

Mr. JOHNSON. Yes, I have.

Senator DECONCINI. And that has been denied, I assume?

Mr. JOHNSON. We have received small numbers.

The greatest increase is of late, and certainly your office has asked questions with respect to this—on the drug enforcement side.

Senator DECONCINI. That has been the justification for some additional agents?

Mr. JOHNSON. Yes, Mr. Chairman.

Senator DECONCINI. Fair enough.

Mr. Johnson, how often do you meet with your superior?

Mr. JOHNSON. At least once a week.

Senator DECONCINI. Once a week. And is he aware of the problems that you have, and the needs that you have, if you were to adequately enforce the Federal laws on the BLM lands?

Mr. JOHNSON. Yes, he is aware.

Senator DECONCINI. And do you know, has he made any recommendations to the director of the BLM?

Mr. JOHNSON. In the time that he has been there, he has been most supportive, to include increasing my staff to a limited extent here in Washington, as well as the support in the drug enforcement effort.

Senator DECONCINI. So it has been primarily in the area of drug enforcement that the emphasis has come for some increase?

Mr. JOHNSON. Only because that has been the most recent issue, Mr. Chairman.

Senator DECONCINI. I understand.

Now, I do want to point out that we will have people from the Inspection Division of the Bureau of Land Management testifying this afternoon, so we are going to have the other confusing side of this problem brought before us, I guess.

Do you meet with the Inspection people of the BLM?

Mr. JOHNSON. With the Washington office staff, yes, I do. We have had a very good relationship.

Senator DECONCINI. How often do you meet, just give or take?

Mr. JOHNSON. Probably, again——

Senator DECONCINI. Twice a month, once a month?

Mr. JOHNSON. We probably speak at least one or more times a week.

Senator DECONCINI. Do you share any type of investigative information at all?

Mr. JOHNSON. To the extent that I can, yes. I share that with Mr. George Brown, as well as——

Senator DECONCINI. What do you mean, to the extent that you can?

Mr. JOHNSON. Where we would be concerned about identifying suspects.

Senator DECONCINI. That is relevant to them, do you mean?

Mr. JOHNSON. That is correct, Mr. Chairman.

And they have been very supportive, and they have worked with me on the I&E side on any proposals I have ever made. There has been a collaborative effort.

Senator DECONCINI. Well, Mr. Johnson, I appreciate your coming forward and trying to help us here.

It just boggles my mind what you have told the committee here today. Not to degrade you in any way whatsoever, nor the fine agents that work for you, but the lack of the BLM having personnel or even a plan or a program of how to meet the responsibility that is already statutorily delegated to you, or statutorily specifically referenced to you, it just blows me away that you could be operating.

I had no idea, and I must take some responsibility too, since I serve on the appropriations committee that maybe has seen some of your requests and not funded them. I do not know if that is the case, but it is just amazing to me to see an agency with your responsibilities, outside of Indian land, with the lack of resources that you have had.

How long have you been there?

Mr. JOHNSON. Five years, Mr. Chairman.

Senator DECONCINI. Has the total of 36 agents over the last five years grown or decreased?

Mr. JOHNSON. When I arrived at the BLM, there were 18 agents.

Senator DECONCINI. Eighteen, 5 years ago?

Mr. JOHNSON. And as a result of our efforts, we are where we are now.

Senator DECONCINI. Very good.

I have no further questions.

Mr. Ballen?

Mr. BALLEN. Mr. Chairman, Mr. Johnson, let me just clarify something for the record.

You talked earlier about BIA handling enforcement responsibilities for oil and gas theft on Indian lands. But is it not true that it is BLM inspections and BLM's primary responsibility to inspect and investigate the situation of oil and gas and protect that on Indian lands and Federal lands?

Mr. JOHNSON. Yes, with respect to the inspection portion, the compliance portion. Not the criminal investigations.

Mr. BALLEN. I understand that, and you do not have to answer this question if it goes beyond what you are prepared to say.

But if BIA handles this, in other words, you would have the inspection folks who were out in the field reporting on Federal land to you folks in BLM and reporting on Indian land to BIA outside of your agency. In other words, you would have a duplication of efforts in agencies in an area that is getting little or no attention right now, would that not be correct?

Mr. JOHNSON. That would be correct.

Mr. BALLEN. Thank you.

Mr. JOHNSON. Thank you, sir.

Senator DECONCINI. Thank you, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Senator DECONCINI. We will now hear from Dale Tunnell.

[Witness sworn.]

STATEMENT OF DALE TUNNELL, SPECIAL-AGENT-IN-CHARGE, BUREAU OF LAND MANAGEMENT, SANTA FE, NM

Mr. TUNNELL. Thank you, Mr. Chairman.

Mr. SOLLERS. Mr. Tunnell, please state your full name for the record?

Mr. TUNNELL. Dale L. Tunnell.

Mr. SOLLERS. Welcome, Mr. Tunnell. Thank you for coming out from Santa Fe.

How are you currently employed?

Mr. TUNNELL. I am the Special-Agent-in-Charge, the New Mexico Office, Bureau of Land Management in Santa Fe, New Mexico.

Mr. SOLLERS. And what is your law enforcement background?

Mr. TUNNELL. Three years with the Bureau of Land Management as a special agent, and prior to that, approximately 9 years as a criminal investigator with the Arapaho Sheriff's Department in Littleton, CO.

Mr. SOLLERS. What is your oil and gas background?

Mr. TUNNELL. During the time that I was employed by the Arapaho County Sheriff's Department, I was a criminal investigator to specifically investigate oil and gas problems on country property.

Mr. SOLLERS. How long have you been with BLM?

Mr. TUNNELL. I have been with BLM for 3 years.

Mr. SOLLERS. Are you in fact one of only two special agents at BLM that has had any prior oil and gas experience before coming to BLM?

Mr. TUNNELL. That is correct, sir.

Mr. SOLLERS. Now, based on your experience, both before BLM and during your tenure there, is oil theft a problem on Federal and Indian land?

Mr. TUNNELL. With respect to Federal lands, I would say yes, it is.

Mr. SOLLERS. And what about with respect to Indian land?

Mr. TUNNELL. I am unaware of the current problem.

Mr. SOLLERS. Is that because you have had no experience with it?

Mr. TUNNELL. That is correct.

Mr. SOLLERS. As to Indian land, do you have any idea as to the extent of the problem?

Mr. TUNNELL. I have an impression, yes, sir.

Mr. SOLLERS. And what is that impression?

Mr. TUNNELL. It would be similar to any other crime that would be perpetrated where there are people. Crime is a problem in general, so it also probably would be in that particular industry.

Mr. SOLLERS. Is oil theft, particularly the most sophisticated types of oil theft, difficult to detect?

Mr. TUNNELL. Yes, sir; it is.

Mr. SOLLERS. Now, does BLM have trust responsibility at least at the inspection function over Indian land oil and gas problems?

Mr. TUNNELL. As I understand it, yes.

Mr. SOLLERS. Now, based on your experience, have you detected oil purchasers taking oil through sophisticated methods?

Mr. TUNNELL. Yes, sir, I have.

Mr. SOLLERS. What types of methods have you observed?

Mr. TUNNELL. Generally through what we term pencil theft—by entries with respect to royalties and volumes.

Mr. SOLLERS. Based on your experience, are many oil leases isolated and unsupervised?

Mr. TUNNELL. That is correct.

Mr. SOLLERS. Does that aid in the possibility that there will be oil theft on those leases?

Mr. TUNNELL. Yes, sir, it certainly does.

Mr. SOLLERS. Based on your experience, have you heard about various practices used by oil purchasers?

Mr. TUNNELL. Yes, I have.

Mr. SOLLERS. What types of practices have you actually heard about?

Mr. TUNNELL. One pertains to the actual measurement at the time of transport or sale, particularly with respect to oil measurement, gauging, actually limiting the volume of the gauge by taking away an inch here and an inch there in the volume.

Mr. SOLLERS. But based on your experience in the field, you had at least heard about various mismeasurement techniques which can be used by an oil purchaser, is that correct?

Mr. TUNNELL. That is correct.

Mr. SOLLERS. Do some purchasers have a worse reputation for such mismeasurement than others?

Mr. TUNNELL. Yes, sir; they do.

Mr. SOLLERS. Explain to me, if you would, with regard to those that have the worst reputations, as to why producers continue to sell to them.

Mr. TUNNELL. Quite frequently it is because they are the only people that they have that can enter into contracts with them.

Mr. SOLLERS. So it is basically a monopoly type situation, at times?

Mr. TUNNELL. I would call it that, yes.

Mr. SOLLERS. Now, based on your knowledge of BLM inspection and understanding that BLM inspection is very much separate from BLM law enforcement, is the inspection division conducting production verification of oil and gas wells?

Mr. TUNNELL. Yes; they are.

Mr. SOLLERS. How extensive is that program?

Mr. TUNNELL. First of all, it is very time-consuming, but for those areas that have the expertise to do so, it is very extensive.

Mr. SOLLERS. Isn't it true, though, that BLM inspection is spread thinly over Indian land and Federal land?

Mr. TUNNELL. That is correct.

Mr. SOLLERS. Now, we have already had a full exposure to the problems of delegated authority with law enforcement, so I will not take you through that again.

Mr. TUNNELL. Thank you.

Mr. SOLLERS. I know that seat has already been warmed up a fair amount.

Talk to us about your office, and how many agents you have got there, your budget, etc.

Mr. TUNNELL. I have currently three agents working for me in the Santa Fe office—one law enforcement assistant that does most of the administrative and clerical work.

We have currently six uniformed patrol rangers, law enforcement-types, that operate within various districts within the State of New Mexico.

Mr. SOLLERS. So you have a total of four agents, including yourself, is that true?

Mr. TUNNELL. That is correct.

Mr. SOLLERS. And you cover what States?

Mr. TUNNELL. I cover New Mexico, Kansas, Oklahoma and Texas.

Mr. SOLLERS. And you have law enforcement authority—BLM law enforcement authority—for all four States, is that true?

Mr. TUNNELL. That is correct—approximately 60.5 million acres surface and sub-surface.

Mr. SOLLERS. And you would have responsibility at least for Federal oil and gas leases in that area, is that true?

Mr. TUNNELL. That is true.

Mr. SOLLERS. How much attention can oil and gas get with that number of agents?

Mr. TUNNELL. We work it on a priority basis, specifically with respect to volume.

When we have a fairly substantial loss, that becomes an immediate priority.

Mr. SOLLERS. I take it any law enforcement program that you have in that area would be reactive?

Mr. TUNNELL. We have been reactive in the past. However, of late—within about the last year—we have initiated several undercover investigations that are more related to proactive types.

Mr. SOLLERS. Do any of those undercover investigations relate to oil and gas?

Mr. TUNNELL. Yes; they do.

Mr. SOLLERS. I take it that would have to be on an extremely selective and limited basis, given the fact that you have four agents covering that massive area?

Mr. TUNNELL. Very selective.

Mr. SOLLERS. How many agents do you have devoted to oil and gas?

Mr. TUNNELL. Well, all four are devoted to oil and gas when they receive the assignment, but specifically working nothing but oil and gas problems, I do not have any.

Mr. SOLLERS. And again, you have no delegated authority over Indian land, is that true?

Mr. TUNNELL. As I understand it.

Mr. SOLLERS. So all of this program relates solely to Federal oil and gas leases?

Mr. TUNNELL. That is correct.

Mr. SOLLERS. Do you have any idea, based on your experience, as to how well Indian oil and gas wells are being supervised?

Mr. TUNNELL. No, sir; I do not.

Mr. SOLLERS. Is it the case that many of those oil and gas leases are isolated?

Mr. TUNNELL. Yes, sir; it is.

Mr. SOLLERS. And I take it your office has never handled any oil and gas cases on Indian land?

Mr. TUNNELL. No; we have not.

Mr. SOLLERS. And the only way that you would be able to handle such a case, I take it, given the current state of affairs, is if another agency asked you to come in and perform such work?

Mr. TUNNELL. That is correct.

Mr. SOLLERS. BLM law enforcement would not undertake such an effort on its own, because it does not have the delegated authority?

Mr. TUNNELL. That is also correct.

Mr. SOLLERS. And as already discussed, just to make sure it is clear—is there a formal procedure for the reporting of oil and gas theft on Federal land to BLM law enforcement?

Mr. TUNNELL. On a national scope, there is not.

Mr. SOLLERS. And there has been some reporting on a more limited basis, is that true?

Mr. TUNNELL. In the State of New Mexico, we have a formal reporting process.

Mr. SOLLERS. Are you aware of how many crude oil cases have been made based on BLM inspector leads?

Mr. TUNNELL. To my knowledge, I believe one.

Mr. SOLLERS. And that is with regard to all Federal land?

Mr. TUNNELL. Yes; on a limited scope with my understanding.

Mr. SOLLERS. Does BLM inspection currently have in place any program which would catch the more sophisticated types of purchaser theft on oil and gas land?

Mr. TUNNELL. They have a program that, if it functioned properly, it would.

Mr. SOLLERS. Is the program currently functioning properly?

Mr. TUNNELL. With respect to BLM, I believe it is. But there is another link in that that must be completed.

Mr. SOLLERS. Okay, explain that link if you would.

Mr. TUNNELL. The production verification that we currently have is implemented by an inspector in the field that actually determines the volume production coming out of the ground.

Once they make that determination, that information is forwarded to the Minerals Management Service, where comparison is supposed to be made, and should be made, with the sales volumes.

Mr. SOLLERS. MMS is the actual repository of all the documents with which to compare these figures, correct?

Mr. TUNNELL. Yes.

Mr. SOLLERS. Please proceed. What happens then?

Mr. TUNNELL. If they determine an anomaly exists between the sale volume and the production volume, then it goes to what they call an exception resolution, where they make a determination whether they have a clerical error, or any number of problems that might exist with the reporting procedure.

If they cannot resolve that, then effectively they are supposed to remand that back for further investigation or a further look and a more dedicated process of making sure of what the volumes actually were.

If it works correctly, they generally identify at least the loss. What has occurred in the past is that they will ask for amended reports from the particular operator, telling them to resubmit information.

To my knowledge, as a result of that, there has never been a report of theft or possible fraud by the operator.

Mr. SOLLERS. There has never been an instance where BLM inspection has reported a possible problem, on a Federal lease, to MMS, where there has been a referral?

Mr. TUNNELL. That is incorrect.

Mr. SOLLERS. Okay.

Mr. TUNNELL. There have been numerous cases in the State of Montana, when I was working as an agent up there, where the inspection process identified a number of anomalies in the field.

We drew that to the attention of the Minerals Management Service, and actually accepted for investigation those particular cases.

In each of those cases, though, we entered into an investigation. We identified a large royalty amount that was unpaid, and through our investigative processes actually caused the payment of many of those royalties.

Mr. SOLLERS. What was your point concerning MMS? Why don't you reclarify that?

Mr. TUNNELL. Well, the point with respect to MMS and the number of leases that they also have, and the sales volumes, there is not currently a process where comparisons are made to make a determination of whether fraud actually exists.

It only determines the fact that there is an imbalance between sales and production.

Mr. SOLLERS. Has there been any direction from the top of BLM for the coordination of law enforcement and inspection?

Mr. TUNNELL. There has been, yes.

Mr. SOLLERS. Have any policy decisions been made which would put in place procedures for the reporting of oil theft by BLM inspection to BLM law enforcement?

Mr. TUNNELL. I have no knowledge of that.

Mr. SOLLERS. Now, have there been disputes within the Department of Interior over jurisdiction over oil and gas matters?

Mr. TUNNELL. Yes, sir, I believe there have been.

Mr. SOLLERS. Has that affected you?

Mr. TUNNELL. Specifically, yes.

Mr. SOLLERS. How has it affected you?

Mr. TUNNELL. There have been investigations in our particular area of responsibility in the State of New Mexico where we have had a disagreement between the BLM special agents and the special agents for the Inspector General's office.

Mr. SOLLERS. Has there been interaction between BLM law enforcement and MMS with regard to the MMS information that they have gathered?

Mr. TUNNELL. There has been, yes.

Mr. SOLLERS. And as you testified previously, has there ever been in unison the referral of a case for prosecution which MMS and BLM put together themselves?

In other words, did they ever cooperate on an effort where MMS put together the documents and BLM put together the in-field investigation?

Mr. TUNNELL. Yes, there have been.

Mr. SOLLERS. How many cases?

Mr. TUNNELL. The exact number I am not certain of, but there have been a few in Montana.

Mr. SOLLERS. Is it limited only to Montana?

Mr. TUNNELL. It has been, yes.

Mr. SOLLERS. To your knowledge, has MMS ever reported possible theft on Indian land to BLM?

Mr. TUNNELL. I do not believe so.

Well, with respect to law enforcement, I do not believe they have.

Mr. SOLLERS. Is there a memorandum of understanding which directs MMS to do so?

Mr. TUNNELL. With respect to Indian lands, I am not certain. On Federal lands, there is.

Mr. SOLLERS. Do you obtain voluntary submission of MMS audits?

Mr. TUNNELL. Not of late, we have not.

Mr. SOLLERS. In fact, have you had to threaten a grand jury subpoena in order to obtain submission of an MMS audit?

Mr. TUNNELL. There have been discussion of grand jury subpoenas to obtain it, yes.

Mr. SOLLERS. And have you had difficulties at times seeking MMS cooperation in prosecutions?

Mr. TUNNELL. There have been.

Mr. SOLLERS. And can you give one example? Is there one with Branch Oil and Gas?

Mr. TUNNELL. There is one currently that is pending on a particular lawsuit in the State of Montana, of which I am a party, that the Minerals Management Service did much of the audit work in conjunction with the Montana State Department of Revenue.

The case was remanded to the United States Attorney for prosecution, and the response was that because of the acquiescence of the Minerals Management Service to allow this to exist for a dura-

tion of time, the U.S. attorney felt like there was no jury appeal to prosecute it, and therefore declined.

Mr. SOLLERS. How long had MMS acquiesced in this practice?

Mr. TUNNELL. In that particular circumstance, I think approximately 3 years.

Mr. SOLLERS. What agency is it your understanding that actually gets BLM inspector referrals?

Mr. TUNNELL. Well, upon my arrival to BLM in 1986, the push has been that our inspectors will refer, at least on Federal lands, to the BLM special agents. There has been a continuous training process on both sides of the fence.

With respect to Indian lands, I believe it is still the BIA.

Mr. SOLLERS. And based on your experience, is BIA law enforcement equipped to handle oil and gas investigation?

Mr. TUNNELL. I do not believe so.

Mr. SOLLERS. Do they have any oil and gas specialists?

Mr. TUNNELL. I am not aware of any.

Mr. SOLLERS. As you previously testified, the making of an oil and gas case is relatively difficult, is that true?

Mr. TUNNELL. That is true.

Mr. SOLLERS. Particularly with the sophisticated forms of theft?

Mr. TUNNELL. That is true.

Mr. SOLLERS. Have possible frauds or suspicious circumstances on Indian land with regard to oil and gas matters been brought to your attention?

Mr. TUNNELL. Yes; they have.

Mr. SOLLERS. By whom?

Mr. TUNNELL. By my inspectors in Oklahoma.

Mr. SOLLERS. And can you handle those?

Mr. TUNNELL. We cannot.

Mr. SOLLERS. And why is that?

Mr. TUNNELL. Because we lack the jurisdiction and the delegation to do so.

Mr. SOLLERS. If you had the jurisdiction and delegation, could you handle them?

Mr. TUNNELL. Probably not.

Mr. SOLLERS. What has been your experience with BLM inspection and their attitude towards the criminal prosecution process?

Mr. TUNNELL. Well, the inspectors themselves are very capable of doing the inspections on the leases.

With respect to law enforcement functions, they are neither trained nor do they really have it within their job descriptions who the person is who actually directs them to do law enforcement activities.

So, there is some apprehension for them to get involved in the law enforcement side of it.

The other thing that comes to mind is that quite frequently, an inspector will have to testify in a criminal court or in a trial, and again these people are not generally trained for courtroom testimony, and the things that they are going to endure when they get on a witness stand. It does create some apprehension for them.

Mr. SOLLERS. Let me backtrack here.

Has BLM inspection, to your knowledge, identified oil and gas theft as a major priority?

Mr. TUNNELL. Well, I believe, because of the pilot project, that there is an indication that that was the push for inspection in the first place.

Mr. SOLLERS. But as we heard testimony previously, that pilot project has lapsed, has it not?

Mr. TUNNELL. It has.

Mr. SOLLERS. And there are no formal procedures for the reporting of oil and gas theft by Inspection to Law Enforcement at BLM?

Mr. TUNNELL. With the exception of the State of New Mexico.

Mr. SOLLERS. Elsewhere, though—Oklahoma, Utah——

Mr. TUNNELL. Well, you have to understand that Oklahoma is also part of the New Mexico State office, and that is within our realm. Only within our particular region do I know that exists.

Mr. SOLLERS. So you are having reported to you now oil and gas theft by the inspectors, is that true?

Mr. TUNNELL. That is true.

Mr. SOLLERS. About how many cases have you worked since this program was put into place? Oil and gas cases?

Mr. TUNNELL. We received approximately 130 reports since November of 1987. Of those, the majority of those were small volumes—four or five barrels of gas condensate. The major cases, of more major volumes, all of those have been investigated and are still currently under investigation. That amounts to seven or eight cases.

Mr. SOLLERS. And are all those cases on Federal land?

Mr. TUNNELL. All those are on Federal land.

Mr. SOLLERS. How many cases have you had reported to you on Indian land, do you know?

Mr. TUNNELL. Three that I can recall.

Mr. SOLLERS. And of course you could not handle those because you do not have the delegated authority, is that true?

Mr. TUNNELL. That is right.

Mr. SOLLERS. Do you view, based on your experience, the theft of natural gas as a significant problem?

Mr. TUNNELL. Yes; it is.

Mr. SOLLERS. Is production verification of natural gas difficult?

Mr. TUNNELL. Time-consuming, I would say.

Mr. SOLLERS. Have you in fact worked some natural gas cases?

Mr. TUNNELL. Yes; I have.

Mr. SOLLERS. Does that include a significant bypass case in Wyoming?

Mr. TUNNELL. I was part of that case, yes, sir.

Mr. SOLLERS. Just describe very briefly what that entailed.

Mr. TUNNELL. Installation of gas dehydrators with a bypass line around the meter, amounting to a volume of approximately 900 mcf per day that was unmeasured gas.

Mr. SOLLERS. Did you estimate the amount of volume that was stolen through that method?

Mr. TUNNELL. I did not.

Mr. SOLLERS. That is a substantial amount, though, I take it?

Mr. TUNNELL. Very substantial.

Mr. SOLLERS. And that is the type of scheme that can be used on Federal or Indian land at any time, is that true?

Mr. TUNNELL. That is true.

I might add, Mr. Sollers, that in that particular case, an inspector in the Wyoming State Office, I believe, he was the individual who identified that problem and called it to the attention of the special agents.

Mr. SOLLERS. Now, Mr. Tunnell, we are all sympathetic up here to the situation that you find yourself in, with four agents covering a massive territory.

What suggestions do you have with regard to BLM law enforcement, and how it potentially could handle the oil and gas theft problem on Indian land?

Mr. TUNNELL. Well, beginning at the top of it, you would have to have a specific delegation to ensure the jurisdiction, and to refrain from turf battles and those issues where information would be closely guarded.

You would have to eliminate sharing of those responsibilities—it would have to be directed to one particular group.

Mr. SOLLERS. Could BLM as BLM Law Enforcement, as it is currently structured, handle oil and gas theft on Indian land?

Mr. TUNNELL. As it is currently structured, I do not believe so.

Mr. SOLLERS. What would it take?

Mr. TUNNELL. Well, the first thing that it would take would be very clear-cut policy from the headquarters to the field, expressing what do we investigate and how do we investigate it with respect to the Indian lands.

Mr. SOLLERS. And that policy obviously is lacking, since you have no delegation of authority at all, is that true?

Mr. TUNNELL. That is true.

Mr. SOLLERS. What else would it take?

Mr. TUNNELL. We would certainly need manpower to do so, additional training for those people to be able to understand the intricacies of oil and gas theft and fraud, and then we would certainly need the budget to be able to support that manpower.

Mr. SOLLERS. Would line authority be helpful?

Mr. TUNNELL. Oh, it certainly would.

Mr. SOLLERS. How about a relationship with MMS? What could be done there?

Mr. TUNNELL. Well, there would have to be a directed policy to MMS, probably from the Interior level, stating specifically what their responsibilities were, as well as those of the Bureau of Land Management.

Mr. SOLLERS. Mr. Chairman, that concludes my questions.

Mr. Tunnell, I appreciate your cooperation.

Senator DECONCINI. Yes, and thank you, Mr. Sollers.

Mr. Tunnell, let me just ask a couple of questions here, more for clarification than anything else.

What would you need to do the enforcement on Indian land? Have you ever considered people-wise or dollar-wise—I know that is not your job—but have you ever sat down to figure it out? What if your superior said, draw me a plan of how you would do it in, say, your district? Have you any idea what that would take?

Mr. TUNNELL. I have a fairly substantial idea.

Senator DECONCINI. Could you just review that briefly for us?

Mr. TUNNELL. I would say that just to handle the problems that exist on the Federal lands right now, we are severely understaffed,

and we would need anywhere from 10 to 20 people to properly do it.

Senator DECONCINI. In your district?

Mr. TUNNELL. Just in my area, yes, sir.

That would also include the uniformed patrol force that are the visibility of law enforcement out there.

With respect to the Indian lands, I am certain that with the vast acreage that exists on the Indian lands, you would certainly have to consider 50 to 100 agents in the Bureau of Land Management alone, just to handle those problems.

Senator DECONCINI. One the enforcement side, you mean, for the enforcement division?

Mr. TUNNELL. Yes.

Senator DECONCINI. And if this was delegated to you, would you contemplate that you would be doing the inspections?

Mr. TUNNELL. Not inspections.

Senator DECONCINI. MMS would continue to do inspections, as you see it?

Mr. TUNNELL. Well, the Bureau——

Senator DECONCINI. Well, excuse me. BIA would continue to do inspections.

Mr. TUNNELL. The Bureau of Land Management, Mr. Chairman, would be doing the inspections as exists right now.

Senator DECONCINI. Yes, I am sorry. The inspection division of BLM would do the inspections as they do now.

Mr. TUNNELL. That is correct.

Senator DECONCINI. And then you would do the enforcement side of it.

Mr. TUNNELL. The criminal side of it, yes.

Senator DECONCINI. That was delegated to you?

Mr. TUNNELL. Yes.

Senator DECONCINI. Now, why should those be separated? Why should you not be doing the whole thing—the inspection, and if you find a violation, then you go after them, and not have to share with another sub-agency within BLM?

Mr. TUNNELL. I think part of it comes back to the technical part of inspections.

You know, it is very time-consuming to do an inspection on a priority item or a priority lease.

With respect to the number of criminal investigations that we handle on an annual basis, for us to also do the inspection would be—the problem would be astronomical.

Senator DECONCINI. You think there is merit to having a separate expert inspection subagency or division?

Mr. TUNNELL. Yes, sir, I do.

Senator DECONCINI. Yes.

Mr. Sollers pointed out that certainly they ought to be under one umbrella or under the same supervisor, or something, so that there would be close coordination. Do you agree with that?

Mr. TUNNELL. Well, I would say that there would need to be very close communication between the two divisions.

Senator DECONCINI. Yes.

Are you able with four agents to enforce all the Federal laws in your district?

Mr. TUNNELL. That is a loaded question, Mr. Chairman.

Senator DECONCINI. I know it is, and it is not meant to be demeaning in any manner. I am just trying to get on the record here the lack of, what to me is very obvious, the number of people that you would need.

Mr. TUNNELL. With respect to the priorities that we have, we are severely limited in enforcement capabilities.

Senator DECONCINI. If you had your druthers, if you could put forth your necessities under the delegated authority you have now, how many additional agents would you need in your division?

Mr. TUNNELL. With respect to all violations?

Senator DECONCINI. Yes, sir.

Mr. TUNNELL. I would be able to use and put full-time work for another 10 agents.

Senator DECONCINI. Okay, Mr. Tunnell.

Thank you for coming forward, and thank you for the fine job you are doing with the limited resources that you have.

Mr. TUNNELL. Thank you.

Senator DECONCINI. That is a great part of our country.

Thank you, sir.

Any further questions?

Mr. SOLLERS. No thank you, Mr. Chairman.

Thank you, Mr. Tunnell.

Senator DECONCINI. Mr. Tunnell, thank you again, and the Special Committee on Investigations will recess until 2:00 p.m., when we will hear additional testimony from the Bureau of Land Management and other representatives thereof.

[Whereupon, at 11:58 a.m., the committee was adjourned, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION—2:18 P.M.

Senator DECONCINI. The special committee will come to order.

This afternoon we are going to hear testimony as a panel from George Brown, Deputy Assistant Director, Energy and Mineral Resources, Bureau of Land Management; Dale Pylant, Director for Oil and Gas Inspection, Bureau of Land Management, from Oklahoma City; Jim Sims, District Manager, Bureau of Land Management, from Tulsa, OK; and Bob Goodman, Supervisor, Inspection and Enforcement Technicians, Bureau of Land Management, also of Tulsa, OK.

Gentlemen, would you all please come forward and raise your right hand, please?

[Witnesses sworn.]

Senator DECONCINI. Please be seated.

Mr. Ballen will commence with the questions.

Mr. BALLEN. Thank you very much, Mr. Chairman.

STATEMENT OF GEORGE BROWN, DEPUTY ASSISTANT DIRECTOR, ENERGY AND MINERAL RESOURCES, BUREAU OF LAND MANAGEMENT; DALE PYLANT, DIRECTOR FOR OIL AND GAS INSPECTION, BUREAU OF LAND MANAGEMENT, OKLAHOMA CITY; JIM SIMS, DISTRICT MANAGER, BUREAU OF LAND MANAGEMENT, TULSA, OK; AND BOB GOODMAN, SUPERVISOR, INSPECTION AND ENFORCEMENT TECHNICIANS, BUREAU OF LAND MANAGEMENT, TULSA, OK

Mr. BALLEN. Gentlemen, we will go in the following order, and I will have a few questions for each of you and then the chairman and cochairman will proceed. We will start with you, Mr. Sims, to Mr. Pylant, to Mr. Goodman, and finally to Mr. Brown.

Mr. Sims, what is your position with the Bureau of Land Management?

Mr. SIMS. I am the District Manager in Tulsa, Oklahoma.

Mr. BALLEN. And what are your responsibilities as District Manager?

Mr. SIMS. I am responsible for managing the BLM programs in Kansas, Oklahoma, and three-fourths of Texas.

Mr. BALLEN. And how long have you held that position?

Mr. SIMS. I've been in Tulsa since August of 1983.

Mr. BALLEN. So, close to 6 years now?

Mr. SIMS. That's correct.

Mr. BALLEN. Do part of your responsibilities involve the prevention of drainage from federal Indian lands?

Mr. SIMS. That is correct.

Mr. BALLEN. And what is meant by "drainage" there?

Mr. SIMS. Drainage is the production of hydrocarbons or gas from beneath lands that are not participating in the wells production.

Mr. BALLEN. Now, sir, we have taken a full deposition of you before in Oklahoma, have we not?

Mr. SIMS. That is correct.

Mr. BALLEN. Now, sir, we went into great detail in to the Bureau of Land Management's drainage program as it pertains to Oklahoma; is that true?

Mr. SIMS. Yes; we did.

Mr. BALLEN. Without repeating in exhaustive detail your earlier testimony, can you let the committee members know how many high priority, unworked drainage cases you currently have on backlog in Oklahoma now on Indian lands?

Mr. SIMS. Yes. I need to refer to a chart.

Mr. BALLEN. That would be fine, sir. While you're looking for the chart, let me ask you: drainage is an area where the BLM, if it spends the resources, is able to successfully recover either in compensatory royalties or drilling; is that a fair statement?

Mr. SIMS. Depending upon the results of the drainage determination. If, in fact, drainage is occurring, yes, we do recover moneys for the lessors.

Mr. BALLEN. The point being that if you had more resources, though, to pursue additional drainage cases on federal Indian land you would collect more money on those cases; is that a fair statement?

Mr. SIMS. I believe it is, sir.

In response to your previous question, I have a figure here of 418 high priority pending drainage reviews.

Mr. BALLEN. And those high priority cases are usually ones where there would be some recovery of funds? You have a success rate of a higher degree with those?

Mr. SIMS. Well, our success rate is higher with those than the lesser priorities, but it would be misleading to lead you to believe that the success rate is that high.

Mr. BALLEN. About 5 percent, Mr. Sims?

Mr. SIMS. In that neighborhood. Yes, sir.

Mr. BALLEN. All right. And it is the Federal Government and the Indians whose drainage cases are not adequately pursued and who are not receiving the royalties that they would otherwise receive; would that be fair?

Mr. SIMS. That is correct.

Mr. BALLEN. Thank you.

Now, as part of your responsibility, Mr. Sims, in BLM, does the Bureau of Land Management have the responsibility for preventing oil and gas thefts on Indian lands through its inspection program?

Mr. SIMS. Yes. That's one of our primary responsibilities.

Mr. BALLEN. And you had a table prepared for us of the number of theft cases in Oklahoma. I'd ask that that be presented into evidence at this time.

[Chart appears in appendix.]

Mr. BALLEN. Mr. Sims, why don't you take a look at that chart. We used your numbers in preparing it, but I want to make sure that it is accurate. Why don't you take a moment to look at it and see if it comports with your figures.

Mr. SIMS. Yes, I believe it does.

Mr. BALLEN. Just for the record, so that it is clear, could you state what other responsibilities of BLM you have in Oklahoma?

Mr. SIMS. Well——

Mr. BALLEN. You said that theft was one of the responsibilities. What are the other responsibilities?

Mr. SIMS. Well, we have active programs in oil and gas, both Indian and Federal. We have a solids program dealing with solid minerals—Indian and federal. We have a wild horse and burro program that we work in that area. We have a cultural program, wildlife program, renewable resource program.

We don't have all of the typical BLM programs in the western states since public surface is very limited in my district, so we deal a lot with the minerals.

Mr. BALLEN. What do you mean by "public surface," sir?

Mr. SIMS. The public domain. The Federal ownership of lands is a very minimal responsibility for us because we deal a lot with acquired lands versus public lands, and those acquired lands normally are not under our purview for surface review or protection, but the minerals associated with them are.

Mr. BALLEN. Just for the record, what is the difference between acquired lands and public lands?

Mr. SIMS. Well, public lands were created when the territories became states and the lands were designated as Federal lands or

public domain—whatever terminology you prefer. Those conveyances included the surface, as well as any subsurface minerals.

Mr. BALLEN. And in Oklahoma, just so that the record is clear, you do not have those public lands?

Mr. SIMS. We do not have the public surface. That is correct. We do have substantial acquired minerals, which are Federal minerals that we administer.

Mr. BALLEN. How much of the land base in Oklahoma that you have responsibility for is related to Indian allottees?

Mr. SIMS. My best estimate of the split of work in minerals in Oklahoma is that the Indian portion versus Federal is in a ratio of 75 percent to 25 percent.

Mr. BALLEN. And that would be 75 percent allotted land?

Mr. SIMS. Allotted and tribal.

Mr. BALLEN. Do you know—and if you don't, you could supply it for the record at a later date—what percentage of that land is allotted versus tribal?

Mr. SIMS. I don't have an exact percentage, but it is very high.

Mr. BALLEN. And, in fact, the tribal would just be limited to Osage County; am I correct in that?

Mr. SIMS. I believe there are some tribal lands in Western Oklahoma, as well.

Mr. BALLEN. But we're talking 90 percent in excess of allotted lands; is that fair?

Mr. SIMS. Yes; I believe that.

Mr. BALLEN. Mr. Sims, let me direct your attention to the chart that has been placed in the record here today. Could you just walk us through the chart and state what it reports and the numbers of thefts and the values there?

Mr. SIMS. Okay.

Mr. BALLEN. Thank you, sir. And this was prepared from your records?

Mr. SIMS. Yes, sir.

Mr. BALLEN. All right.

Mr. SIMS. These thefts represent thefts that have been reported to BLM by the operators. There are no thefts here that were reported by allottees or other agencies or anyone else other than oil and gas operators on Indian lands reporting that thefts had occurred on their facilities.

As you can see, there has been a very limited number of them.

Mr. BALLEN. Yes.

Mr. SIMS. The value is not overwhelming as far as what was lost.

Mr. BALLEN. Just for the record, there were no thefts in 1981, 1982, and 1983; is that correct?

Mr. SIMS. There were none that we found.

Mr. BALLEN. Right.

Mr. SIMS. I qualified this chart when I submitted it to the committee to the degree that up until now we have not had a central filing system to collate these types of reports. They have been placed in case files.

Mr. BALLEN. Did you conduct a review of the case files that were in your district to determine the number of theft reports that were there?

Mr. SIMS. We did not review all case files.

Mr. BALLEN. There is no central filing system for the number of reported thefts?

Mr. SIMS. There is no one central file. The case files are maintained in a central filing system, but there are——

Mr. BALLEN. There is no separate denominated theft file, in other words?

Mr. SIMS. That is correct. There has not been.

Mr. BALLEN. Would you think that these cases that you were able to find represent a fair numbering of the number of cases that, in fact, were reported to the BLM?

Mr. SIMS. I would suspect there may be additional ones, but I do not believe that magnitude would be—certainly not double this list, if there are additions.

Mr. BALLEN. All right. Not double. We're not talking about hundreds of additional instances that are not identified?

Mr. SIMS. Right.

Mr. BALLEN. The records are not that incomplete, are they?

Mr. SIMS. I don't believe so. No.

Mr. BALLEN. Now, sir, if I understand it right, there were three thefts in 1984, and five thefts in 1985, and no thefts in 1987, 1988, and 1989. Would that be fair?

Mr. SIMS. That's correct.

Mr. BALLEN. And what is the total dollar amount associated with those thefts, please?

Mr. SIMS. These thefts total $20,490.

Mr. BALLEN. Now, there are nine to ten inspectors working for the Bureau of Land Management in Oklahoma; is that correct?

Mr. SIMS. That is correct. We have nine.

Mr. BALLEN. You mentioned earlier in your testimony that these thefts reflect operator reports. Now, it is my understanding that you rely totally upon industry to report theft; is that true?

Mr. SIMS. That is one thing that we rely on. Our inspection enforcement program also addresses production accountability, but we have not uncovered theft through that program, yet the intent of that program is to, in fact, check for that.

Mr. BALLEN. Sir, you have not—just so I understand what you said—have not uncovered any thefts due to that production verification program; would that be correct?

Mr. SIMS. That is correct.

Mr. BALLEN. So that none of the reports of theft come from the BLM actually identifying the theft themselves?

Mr. SIMS. That is correct.

Mr. BALLEN. Now, Mr. Sims, has the BLM ever conducted a full back gauging operation on Indian land?

Mr. SIMS. Yes; we have.

Mr. BALLEN. And just so the record is clear on this, by a full back gauging operation we mean multiple back gauges over a period of time to determine whether there are any problems with the production being accounted for; is that correct?

Mr. SIMS. That is correct.

Mr. BALLEN. Well, how many back gauging operations were conducted in 1988 by the BLM on Indian land in the State of Oklahoma?

Mr. SIMS. I'll have to find the chart that references that.

Mr. BALLEN. I believe it was four. Would that be fair?

Mr. SIMS. That is correct.

Mr. BALLEN. How many in 1987?

Mr. SIMS. In 1987 there were four.

Mr. BALLEN. Now, as you previously testified, this is a very small program; wouldn't that be right?

Mr. SIMS. These inspections are very labor intensive, and in order to meet the other requirements that we have for inspections of leases with significant production, or a history of operator noncompliance, we have to limit our efforts in these types of inspections simply because they do take so much time.

Mr. BALLEN. I understand. But in terms of the impact on Indian leases, I believe your work was insignificant, and four out of the number of lease holds in Oklahoma would strike it as insignificant.

Mr. SIMS. I wouldn't disagree with that characterization.

Mr. BALLEN. Now, you also testified previously in deposition that sophisticated theft, the kind of theft that the committee had exposed here yesterday—the deliberate mismeasurement of oil in a purchaser's favor—goes completely undetected by the Bureau of Land Management?

Mr. SIMS. If, in fact, we do not have the opportunity to witness gauging ourselves, then we would have no way to necessarily know that that was occurring.

Mr. BALLEN. Right.

Mr. SIMS. However, it is quite coincidental that we just recently started a formal verification inspection on a Koch purchased lease, totally unaware of your activities with Koch.

Mr. BALLEN. We'll come to that in a moment, sir. In answering my question, though, with only four measurement back gauging operations for the entire State of Oklahoma in 1988, large-scale mismeasurement, such as the committee exposed yesterday, is going undetected by the BLM?

Mr. SIMS. It certainly could.

Mr. BALLEN. And is.

Mr. SIMS. Well, again, based upon the testimony I heard yesterday, I would agree with that supposition, but I don't know that for a fact, sir.

Mr. BALLEN. All right. Now, you testified before that it made you feel somewhat uncomfortable knowing that there is a possibility of a more sophisticated kind of theft that was going undetected.

Mr. SIMS. I think that potential is certainly there.

Mr. BALLEN. Does it make you feel uncomfortable?

Mr. SIMS. Yes, it does.

Mr. BALLEN. And the opportunity to steal crude oil by mismeasurement is basically wide open in Oklahoma and anywhere else in the United States?

Mr. SIMS. I believe it is.

Mr. BALLEN. Anyone who wanted to steal the oil could?

Mr. SIMS. Yes, sir.

Mr. BALLEN. And the Bureau of Land Management simply relies on industry to report the theft; is that fair?

Mr. SIMS. That's not quite totally true. Again——

Mr. BALLEN. Well, let me ask you this: how many times in the past 8 years has the Bureau of Land Management uncovered, through its own inspection program, theft in Oklahoma?

Mr. SIMS. Very few, if any.

Mr. BALLEN. Thank you, sir.

Mr. Pylant?

Mr. PYLANT. Yes, sir.

Mr. BALLEN. What is your position with the Bureau of Land Management?

Mr. PYLANT. I'm Supervisor of Inspection and Enforcement in Oklahoma City.

Mr. BALLEN. And do you have responsibility for oil and gas inspection and the prevention of theft on Indian land for your part of Oklahoma?

Mr. PYLANT. Yes, sir.

Mr. BALLEN. And what part of Oklahoma is that?

Mr. PYLANT. It is basically the western half.

Mr. BALLEN. Now, you have four inspectors under your command?

Mr. PYLANT. Yes, sir.

Mr. BALLEN. Sir, let me ask you this question: Is the Bureau of Land Management fully meeting its trust responsibilities to protect Indian oil and gas resources?

Mr. PYLANT. I think so. Yes, sir.

Mr. BALLEN. How many thefts of oil and gas in western Oklahoma from Indian lands have you uncovered since 1981? We have nine total for the whole of Oklahoma; how many of those are represented by western Oklahoma?

Mr. PYLANT. I believe on that chart there are probably four. I had one that is not on that chart.

Mr. BALLEN. All right.

Mr. PYLANT. And I have also, in the last few days, had two belated thefts reported—one was for 1983 and one was for 1984—from the same operator.

Mr. BALLEN. Any reported thefts since 1987?

Mr. PYLANT. No, sir.

Mr. BALLEN. Mr. Pylant, in prior testimony and deposition you testified that you personally doubted that any oil and gas theft has occurred on Indian land since the decline in the price of oil from the mid 1980's; is that correct?

Mr. PYLANT. That is correct.

Mr. BALLEN. And how do you monitor theft in your district in Oklahoma?

Mr. PYLANT. It is from the operators, themselves. They report it.

Mr. BALLEN. Are any thefts uncovered from your own inspection program?

Mr. PYLANT. I wouldn't recall a theft. I have noticed irregularities in production reports.

Mr. BALLEN. Did that lead to any uncovering of any oil that was missing?

Mr. PYLANT. I believe it will. Yes.

Mr. BALLEN. Has it since—how long have you been with BLM?

Mr. PYLANT. I've been with them approximately 12 years.

Mr. BALLEN. Has it in the period of time that you have been with them?

Mr. PYLANT. Yes, sir.

Mr. BALLEN. When?

Mr. PYLANT. This is still pending within——

Mr. BALLEN. Well, I guess I'm——

Mr. PYLANT [continuing]. The last year.

Mr. BALLEN. It is not reflected on the chart there?

Mr. PYLANT. No.

Mr. BALLEN. So you're talking about one case within the last year, then?

Mr. PYLANT. Yes, sir.

Mr. BALLEN. Now, you testified previously that the BLM should be going to other sources then simply the operators, such as security people within the oil companies, anonymous tips, allottees, etc., but you didn't know whether any of the inspectors have, in fact, done that.

Let me ask you this question: since the time of your deposition, have you found out whether, in fact, BLM is going to those kinds of sources to uncover theft?

Mr. PYLANT. No, sir.

Mr. BALLEN. Is it fair to say, Mr. Pylant, that oil and gas theft may occur by sophisticated measurement techniques calculated in the purchaser's favor where oil is being purchased by another party?

Mr. PYLANT. That's possible. Yes.

Mr. BALLEN. Now, during 1988 I believe for western Oklahoma you conducted four complete back gauging operations that could have revealed sophisticated theft; correct?

Mr. PYLANT. I believe that is correct.

Mr. BALLEN. But no theft was revealed by those back gauging operations was it?

Mr. PYLANT. No, sir.

Mr. BALLEN. In fact, BLM, in your experience, hasn't detected that kind of mismeasurement in the purchaser's favor at all, has it?

Mr. PYLANT. Not that I am aware of.

Mr. BALLEN. Thank you.

I believe you previously testified that your inspectors spend 75 percent of their time in the office, rather than in the field; is that correct?

Mr. PYLANT. It has been, in the past year.

Mr. BALLEN. Thank you, Mr. Pylant. Thank you for your testimony.

Mr. Goodman, let me turn to you, sir.

Mr. Goodman, what is your position with the Bureau of Land Management?

Mr. GOODMAN. I supervise the Inspection and Enforcement team in Tulsa, Oklahoma.

Mr. BALLEN. And, again, how long have you been supervising?

Mr. GOODMAN. In Tulsa, I have been there 5 years. I was supervisor in off-shore in Texas before that.

Mr. BALLEN. And how long have you been with the Bureau of Land Management, sir?

Mr. GOODMAN. I have been with the Bureau of Land Management for 5 years.

Mr. BALLEN. And you have been for 5 years director of oil and gas inspection in Tulsa?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. What part of the State of Oklahoma does that cover?

Mr. GOODMAN. The eastern part.

Mr. BALLEN. And does that cover the Indians in that area?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. And you have responsibility for preventing oil and gas thefts on Indian land?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. Now, let me direct your attention to the chart that is in the record now and note that the BLM received no reports of theft for 1987, 1988, or 1989 on Indian land; is that correct?

Mr. GOODMAN. That's correct.

Mr. BALLEN. And did you uncover any thefts yourself during that period of time?

Mr. GOODMAN. No, sir.

Mr. BALLEN. Again, for the record, you rely totally on industry to report thefts; is that correct?

Mr. GOODMAN. Yes, if it is theft on site.

Mr. BALLEN. Very good. Mr. Goodman, since 1981 you have had five reported cases of theft on Indian land in eastern Oklahoma?

Mr. GOODMAN. Yes, sir. That's since 1984.

Mr. BALLEN. All right, since 1984. Well, you didn't have any from 1981 to 1984.

Mr. GOODMAN. Right.

Mr. BALLEN. So it would include five in total then, I would suspect.

Sir, does the BLM ever conduct full back gauging operations?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. But you haven't done any in 1988, have you, in your district?

Mr. GOODMAN. No, sir.

Mr. BALLEN. And in 1987 you performed one?

Mr. GOODMAN. That's not true. I see it in the deposition—I think I was nervous—but I did more than that.

Mr. BALLEN. How many did you do in 1987?

Mr. GOODMAN. I would have to search the records. I didn't have time.

Mr. BALLEN. But it would be more than one?

Mr. GOODMAN. Yes, sir. This was one. The one we were referring to here was the one that was referred to in MMS.

Mr. BALLEN. Would there be more than two?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. More than five?

Mr. GOODMAN. I would say at least five.

Mr. BALLEN. Well, Mr. Sims testified to four total in Oklahoma.

Mr. GOODMAN. In 1987?

Mr. BALLEN. In 1987, sir.

Mr. GOODMAN. I'm confused there, then.

Mr. BALLEN. How many full back gauging operations in 1987?

Mr. GOODMAN. Probably two then.

Mr. BALLEN. Two. All right.

Sir, you recognize, of course, that there is a potential for widespread theft on Indian land?

Mr. GOODMAN. Yes, I do.

Mr. BALLEN. Let me read, if I may, a statement you made in your deposition before. It is on page 19, and I believe you have it before you.

You testified:

> What bothers me is I don't understand the oil companies. They don't monitor. They take the purchaser's gauger's report, and a lot of times the oil companies aren't out there. They just call them and tell their purchasers they have a tank of oil and come and pick it up.

Does that correctly reflect your view on this?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. Mr. Goodman, I guess, to use your words, what bothers me, at least, is I don't understand the BLM. They don't monitor. The BLM totally relies on the industry to report the theft, as you just testified. There is no independent back gaugings or full inspections, no complete program.

And, in fact, as you testified, you don't contact the oil company's security forces either. I believe your testimony was that such companies as Phillips, Texaco, and Sun do not have security forces; is that true?

Mr. GOODMAN. In the recent year; yes, that's true.

Mr. BALLEN. Now, let me ask you this: how do you know they don't have security forces? By talking to them?

Mr. GOODMAN. By inspection in the field and knowing the processes where they—in years before, they had their offices set up in a different area. That is no longer true.

Mr. BALLEN. Have you actually talked to them to ascertain that they no longer have a security force?

Mr. GOODMAN. No, sir, I haven't.

Mr. BALLEN. So you wouldn't know whether they have security forces then?

Mr. GOODMAN. No, I wouldn't know, but just from the field reports and everything——

Mr. BALLEN. Would it surprise you to learn that Phillips, Sun, and Texaco each has up to seven full-time investigators in the field?

Mr. GOODMAN. Yes, it would.

Mr. BALLEN. Well, that's what they have told us.

Mr. GOODMAN. Yes.

Mr. BALLEN. Now, sir, you haven't contacted the FBI either to report theft or learn of possible problems; is that correct?

Mr. GOODMAN. I have attempted to.

Mr. BALLEN. You have attempted to?

Mr. GOODMAN. Yes, sir; and on my report on the lease in 69856, I believe that this was Fresci County, I went back to read this report, and we do have on there that the FBI was notified.

Mr. BALLEN. And that is on one instance?

Mr. GOODMAN. Yes.

Mr. BALLEN. On which one of the thefts indicated on that chart was the FBI notified?

Mr. GOODMAN. That's 59865, 1985, October 28.

Mr. BALLEN. And that is a theft of $2,625, correct?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. Now, did you testify that you haven't contacted the FBI because you didn't have the proper telephone number?

Mr. GOODMAN. We could never get any response and didn't have the proper telephone number.

Mr. BALLEN. Well, let me just make sure I understand this. You didn't have the proper telephone number for the FBI?

Mr. GOODMAN. Yes, sir; when we'd call, there wasn't anyone at that number.

Mr. BALLEN. Well, Mr. Goodman, I don't want to belabor the point, but I'm not sure I understand what you mean here. You didn't have the proper telephone number for the FBI?

Mr. GOODMAN. I guess that's what I gave in the deposition, so I'll just have to stand behind that.

Mr. BALLEN. Is that true, sir?

Mr. GOODMAN. Yes, sir; I'll just have to stand behind it.

Mr. BALLEN. Well, I don't mean to sound at all facetious about this, sir, but the FBI is listed in every telephone book, isn't it?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. So what do you mean when you say you didn't have the proper telephone number?

Mr. GOODMAN. I'll just have to stand by what I said on the deposition. That's what I said, so—they were contacted in this theft in 1985. It is in the report.

Mr. BALLEN. Well, we have had Agent Elroy up here from the FBI, who investigated a case involving Koch Oil.

Mr. GOODMAN. Yes.

Mr. BALLEN. I'm sure if the BLM came up with such a case where there were mismeasuring practices, Mr. Elroy would love to hear from you.

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. And he is listed right on the front page of every telephone book under FBI.

Mr. GOODMAN. I might reference Mr. Pylant at this time. He has had some procedures that way.

Mr. BALLEN. Well, Mr. Sims mentioned earlier that the BLM received a report on Koch Oil recently, and that was on Indian lands, and I believe it was on Creek land; is that right?

Mr. GOODMAN. Yes; that's right. Yes, sir.

Mr. BALLEN. Didn't you receive this report on Koch Oil in December, 1988?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. December 1988?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. And what has been done on that case since December 1988?

Mr. GOODMAN. It has been in a level II inspection status, and we are still dealing with that. It was going to be in an interim production verification program, but now, since we know that we have problems with Koch, it will go into a full-scale production verification.

Mr. BALLEN. Well, sir, you have had this case on Koch Oil since December 1988; is that right?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. Since December 1988. I just want to point out for the record here, the committee began its investigation on Koch Oil on March 20.

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. And in literally 3 weeks' time our investigators conducted six back gauging operations and discovered millions in theft. How much has the BLM discovered since December 1988?

Mr. GOODMAN. Now, you have to remember this—we wrote the incident of non-compliance in December, and—I need to read my inspector's report. Excuse me just 1 minute.

He doesn't have a time that he was out there on this. Now, the INC was written in December—incident of noncompliance. This wasn't on Koch. This was on the company, itself.

He went back to inspect the lease to see if the violations that were there had been corrected, and this is when he found that the truck was outloading oil without a run ticket.

Mr. BALLEN. When did he find that, Mr. Goodman?

Mr. GOODMAN. This is what I'm looking for here on the inspection now. I don't see a date.

Mr. BALLEN. The process started, though, in December, 1988; is that right?

Mr. GOODMAN. Yes, sir.

Mr. BALLEN. Thank you.

Mr. GOODMAN. But this wasn't dealing with the truck at that time.

Mr. BALLEN. Well, how much theft or any practices with Koch Oil have been uncovered, if any, since December 1988, when you first had a report?

Mr. GOODMAN. This will have to be qualified when we go through a full production report.

Mr. BALLEN. That hasn't been done yet, has it?

Mr. GOODMAN. It is in the operation now. If you will notice the run ticket, sir, with this report, and they will be sending in all the strap gauges on the tanks——

Mr. BALLEN. But it hasn't been done yet, has it?

Mr. GOODMAN. No, sir.

Mr. BALLEN. And we're talking now December, January, February, March, April, and May, and I just wanted to note the committee's time period on its investigation.

Mr. Brown, if I may turn to you, sir—thank you, Mr. Goodman.

You are the responsible official in Washington overseeing the BLM's inspection program on Indian lands; is that correct?

Mr. BROWN. That is part of my duties. Yes.

Mr. BALLEN. Now, when you came in to talk to committee staff you stated that theft of oil on Indian lands was minor, the oil companies were honest, and that BLM was adequately meeting its responsibilities to monitor for potential theft.

I want to ask you this, Mr. Brown: If that is true, sir, why is it, in a manner of months, this committee uncovered millions of dollars of theft on Indian oil and gas while, in 8 years, the BLM—Ms.

Fleck, could you show the other chart, please?—in 8 years the BLM has uncovered $20,490 worth of oil stolen?

In other words, Mr. Brown——

Mr. BROWN. And the question is?

Mr. BALLEN. The question is: if it is true, as you told us, that theft is minor, the oil companies are honest, and the BLM is adequately meeting its trust responsibilities to American Indians, why is it, in a matter of months, this committee uncovered millions of dollars worth of theft and in 8 years the BLM has uncovered only $20,490 worth?

Mr. BROWN. Well, I would have one comment. On the second chart that is sitting here on the floor, where it is talking about the Oklahoma-wide and company-wide purchases of some individual companies, I don't know whether that is Oklahoma-wide or whether that is related to Indian leases or what. It is not clear from that chart whether that is just Indian land activities or not.

Mr. BALLEN. Let me make it clear.

Mr. BROWN. I wanted to make the point that the Indian activity within the State of Oklahoma is—back to my original comment—fairly minor when it is compared to the overall 100,000-plus wells that are producing oil and gas in the State of Oklahoma, and we're dealing with some 5,000 of those.

Mr. BALLEN. How many wells are Indian wells in the State of Oklahoma that are producing, sir?

Mr. BROWN. Around 5,000 to 6,000.

Mr. BALLEN. Around 5,000 to 6,000 wells? I thought you said the total was 5,000 of all wells that you were dealing with on BLM.

Mr. BROWN. No; the total of Indian land wells in the State of Oklahoma are 5,000 to 6,000.

Mr. BALLEN. Sir, you just testified you weren't aware of what the chart showed and how much oil from Indian lands was being stolen that the committee has uncovered. Well, let me just make you aware of what the committee has uncovered so you can answer the question properly.

The committee, in the course of 1 month, conducted six surveillances and back gauging on Indian land. The committee uncovered, during that time, one single theft incident of over $400,000. The committee also uncovered, based on company records, in excess of millions of dollars—millions of dollars, sir—of oil stolen from Indian land in the State of Oklahoma.

Let me ask, then, the question again: in your view, if that theft is minor and the companies are honest and the BLM is meeting its responsibility, why was the committee able to uncover millions of dollars of oil theft, sir, in a matter of weeks, where, in 8 years, the BLM has uncovered only $20,000.

Mr. BROWN. Mr. Ballen, I'm not able to answer the question as to why the committee was able to uncover that amount. Obviously I can't answer that. I don't know what you did or how you did it or anything else.

Mr. BALLEN. Well, we don't have——

Mr. BROWN. The comment I made to you earlier in our discussion was that I felt that the BLM was discharging its trust responsibility appropriately and adequately, and I still believe that.

Mr. BALLEN. Sir, you have nine inspectors assigned to the State of Oklahoma. We had two individuals out there. We have heard today that 75 percent of their time is in the office. There is no contact with oil company security forces. There is no contact with the FBI. You don't even know the telephone number of the FBI. There is no time spent hiding behind bushes or behind cows as our investigators have done.

Meanwhile, sir, what is happening on Indian lands? What is happening to the American Indians out there? Millions of dollars are being stolen, and you come up here with a report of $20,000. Whose responsibility is it, sir?

Mr. BROWN. For what?

Mr. BALLEN. To protect the American Indians with their oil and gas resources.

Mr. BROWN. I think the Bureau of Land Management's responsibility deals with an inspection program for oil and gas activity on Federal and Indian leases. That is our responsibility. We do have an inspection force in the field on a regular basis. We do conduct our inspections and activity in the format and the form that the Federal Oil and Gas Royalty Management Act that was passed by Congress suggested that we should.

Mr. BALLEN. Well, sir, your inspectors—and they have candidly testified here today--have reported that they are aware of the possibility of purchaser theft. In fact, they had a report on Koch from December 1988, to just take one example, indeed, an isolated one. Yet, where are the results?

Mr. BROWN. Of their efforts?

Mr. BALLEN. Yes, sir.

Mr. BROWN. I think I heard them testify to the effect that they are continuing to conduct their inspection activities, their investigations, and proceeding to deal with that through the normal production verification activities that they conduct on the Federal and Indian leases.

Mr. BALLEN. Well, I don't have any further questions. I'll turn it over to the chairman.

I would just note that they are conducting these inspections and they are following the procedures, as you noted. There seems to be something completely lacking if some Senate committee in several weeks can go out there and, at random, uncover millions of stolen dollars, and in 8 years you had only $20,000, when you know that there is a problem out there.

Mr. Chairman.

Senator NICKLES. Mr. Chairman, could I ask a question or two?

Senator DECONCINI. If you don't mind waiting until we finish with the committee members.

Senator NICKLES. That would be fine.

Senator DECONCINI. Thank you.

Mr. Brown, let me just pursue that a little bit.

It troubles me that you would sit here and testify—and I realize the defense of one's office and turf is very important—that you think the BLM is meeting its responsibilities. Do you think that one of your BLM inspectors, Mr. Goodman, who can't find the FBI telephone number in the Tulsa phone book, is meeting his responsibilities? Is that what you're saying?

Mr. BROWN. I would tell you, Senator, that Mr. Goodman is meeting his responsibilities as an inspector. I'm sure that today he is aware of where to find the telephone number for the FBI, and I'm sure when he returns he will be able to contact them if necessary.

Senator DECONCINI. I'll show you where to find it. It's right there. You don't even have to look it up. It is on the front page.

Mr. BROWN. Thank you.

Senator DECONCINI. And you're telling me that that's meeting the responsibility to American Indians in the BLM?

Mr. BROWN. I would say to you again, sir, that the inspector force and our management in the field are meeting their delegated responsibilities to the Indian Tribes.

Senator DECONCINI. Well, Mr. Brown, I just have to beg to differ with you. That's no more meeting the responsibility than I am an astronaut, and I'm not an astronaut. I can't believe that a Government official would come here and, based on the facts here—just one testimony here that he can't even find the FBI number, and that's meeting a responsibility?

Mr. BROWN. I find that a little unusual myself, but I'm sure there must be some extenuating circumstances in the case of Mr. Goodman that would explain that. I don't know what that is. I did not talk to him about it. But, as you just showed us there, I'm sure he'll be able to find the telephone number for the FBI when he returns to Tulsa.

Senator DECONCINI. I'm sure he will, too. I'm going to send it to him in a letter.

Mr. Goodman, were there some extenuating circumstances here about not knowing where that number is or having the wrong number?

Mr. GOODMAN. No, sir.

Senator DECONCINI. Thank you.

Mr. GOODMAN. The problem is, during the deposition I just said the wrong thing, really, because I did——

Senator DECONCINI. You can correct that now if you want to.

Mr. GOODMAN. Okay. I did attempt to call. I had talked to the FBI and got no response.

Senator DECONCINI. When did you talk to the FBI?

Mr. GOODMAN. It was in 1984.

Senator DECONCINI. Did you keep any records of that?

Mr. GOODMAN. No, sir; I didn't.

Senator DECONCINI. You were able to find the phone number in 1984?

Mr. GOODMAN. Yes, sir.

Senator DECONCINI. And you talked to the Tulsa office of the FBI?

Mr. GOODMAN. No, sir; In Oklahoma City.

Senator DECONCINI. In Oklahoma City?

Mr. GOODMAN. Yes, sir.

Senator DECONCINI. Do you know who you talked to?

Mr. GOODMAN. No, sir; I didn't.

Senator DECONCINI. And what did you tell them?

Mr. GOODMAN. I just wanted to have someone contact me. I told them we had an oil and gas theft.

Senator DECONCINI. And did you give them your name?

Mr. GOODMAN. Yes, sir.

Senator DECONCINI. And you didn't take down the name of the agent you talked to?

Mr. GOODMAN. No, sir; they were supposed to call me back.

Senator DECONCINI. They were supposed to call you back? Did you leave them your telephone number?

Mr. GOODMAN. Yes, sir.

Senator DECONCINI. Do you remember?

Mr. GOODMAN. Yes, sir.

Senator DECONCINI. And that's all you did? You didn't send any written message or anything?

Mr. GOODMAN. No, sir.

Senator DECONCINI. Mr. Brown, do you think that's fulfilling the responsibility of reporting something to a law enforcement agency? Call them up and give them a number and say call me back?

Mr. BROWN. What I heard him say was that he did make the contact with the FBI, and——

Senator DECONCINI That's right.

Mr. BROWN [continuing]. He was unable to contact and talk to an agent, and he left his telephone number and name and a brief message of what it was about, and they didn't return his call.

Senator DECONCINI. And that's enough in your opinion; is that right? That's all he is required to do to meet his responsibility is call up the FBI and say, "I'm with BLM inspection and I want to leave my name because I want to file a complaint," and forget about it, and here we are in 1989 and you're telling me that that's meeting his responsibility; is that right?

Mr. BROWN. I certainly think that Mr. Goodman did what he was expected to do at the time.

Senator DECONCINI. Thank you.

Mr. Goodman, did you make any other calls since 1984 to the FBI?

Mr. GOODMAN. No, sir; we received no response on this. You see, in 1985 my inspector called—the FBI was notified by us on this 1985——

Senator DECONCINI. That would be the October 28, 1985, case, is that right?

Mr. GOODMAN. Yes, sir.

Senator DECONCINI. And your records show that your inspector called the FBI?

Mr. GOODMAN. That's right.

Senator DECONCINI. In what office? The Oklahoma City office? Does it say there?

Mr. GOODMAN. Yes, sir.

Senator DECONCINI. What date?

Mr. GOODMAN. It doesn't have a date on here, but it would be at this same date, probably, because the date we received this report we called all the agencies and all the agencies were called—the New Mexico State office and the Muskogee office, BIA, Federal Marshall's office, and I&E office in Washington, DC, and the FBI in Oklahoma.

Senator DECONCINI. And what inspector was that who did that?

Mr. GOODMAN. Ed Ruda.

Senator DECONCINI. Ed who?

Mr. GOODMAN. Ruda.

Senator DECONCINI. Will you spell that, please?

Mr. GOODMAN. R-U-D-A.

Senator DECONCINI. Ruda. And did he say who he spoke to at any of those agencies?

Mr. GOODMAN. No, sir.

Senator DECONCINI. And he didn't give the exact date that he talked to them?

Mr. GOODMAN. No, sir.

Senator DECONCINI. Is there any information in your report that he followed up with any written information?

Mr. GOODMAN. No, sir.

Senator DECONCINI. Or that he received any response from any of those agencies?

Mr. GOODMAN. He had no response.

Senator DECONCINI. Does it say that he had no response?

Mr. GOODMAN. It doesn't say.

Senator DECONCINI. It doesn't say, so you don't know if he had a response, do you?

Mr. GOODMAN. No, sir.

Senator DECONCINI. Now, Mr. Brown, is that meeting the responsibility of one of your inspectors?

Mr. BROWN. Senator, the effort on the part of the inspectors to report this potential theft, possible theft, loss of oil indication—what I heard him say was that he did make efforts to report that to some appropriate law enforcement agencies. And I think that does satisfy his responsibilities and discharges his duties.

Senator DECONCINI. You do? And because he did it once and there was no response—of course, he didn't follow up with anything, but nobody called him back, he hasn't done it since then because there was no response. Do you think that's adequate, too?

Mr. BROWN. I guess we could go down the line saying how many times he has to call and get no response, or——

Senator DECONCINI. How many times does he——

Mr. BROWN. I don't know the answer to that.

Senator DECONCINI. Would you think more than once would be reasonable?

Mr. BROWN. I don't know whether that is reasonable.

Senator DECONCINI. You don't know whether that is reasonable?

How many Indian wells are there in Oklahoma? Mr. Sims, can you help us?

Mr. SIMS. We have 5,000 to 6,000 wells under our jurisdiction, but they are not all Indian, so somewhere between 3,000 to 5,000. We can get the numbers for you.

Senator DECONCINI. You have jurisdiction over approximately 5,000 to 6,000?

Mr. SIMS. In the State of Oklahoma.

Senator DECONCINI. And you think roughly 3,000 of those are Indian wells; is that right?

Mr. SIMS. Yes, sir.

Senator DECONCINI. Now, Mr. Brown, someone here indicated—I think it was you—that they thought that out of all the wells that

you monitor, the Indian wells are relatively small in number. Is that your statement?

Mr. BROWN. The comment I made was that in the State of Oklahoma the number of producing oil and gas wells was something in the neighborhood of 125,000 wells state-wide, all lands.

Senator DECONCINI. All lands?

Mr. BROWN. And of that category of those wells, we have jurisdictional responsibility, as Jim testified, for some 5,000 to 6,000 wells. That is considerably less than 10 percent of the wells in the State of Oklahoma.

Senator MCCAIN. But what in the world does that have to do with your responsibilities?

Mr. BROWN. All it indicates to me, and I was making this point in reference to the chart here made in connection with the overage or shortage reporting of oil, or whatever this is meant to purport here, as to whether this was Oklahoma-wide when it says "All lands in the State of Oklahoma for which these companies purchase," or whether it was just Indian lands, and I was making the point that if that is anything in the State of Oklahoma, then the Indian portion of that would be relatively minor in comparison to that—something less than 10 percent, probably.

Senator DECONCINI. Thank you.

The Senator from Arizona.

Senator MCCAIN. Mr. Sims, you gave a deposition to the committee before appearing here today; isn't that right?

Mr. SIMS. That is correct.

Senator MCCAIN. And did you say—I quote from your deposition:

I think anyone that wanted to steal oil could. The sites are remote, the handling of oil is not totally secure.

Is that an accurate quote?

Mr. SIMS. Yes; I just read that reference a while ago.

Senator MCCAIN. There were no reports of theft in Oklahoma reported to BLM in 1987, 1988, or in 1989. I will quote you again:

I was shocked by the fact that there weren't any, and I think they—

meaning Dale Pylant and Bob Goodman—

were too.

Is that an accurate quote, also?

Mr. SIMS. Yes, sir; I believe it is.

Senator MCCAIN. In 1988, there was a one-third drop in BLM inspections in Oklahoma due to resources diverted to developing an automated inspection record system—AIRIS.

It was recognized that diverting those resources from their normal responsibilities would harm the field presence and inspection program.

Is that an accurate statement also?

Mr. SIMS. Yes, sir, it is.

Senator MCCAIN. So you knew that—at least you stated — that anyone that wanted to steal oil could because the sites were remote and the handling of oil is not totally secure. You knew that there were no reports of theft in Oklahoma reported to BLM in 1987 and 1988 and 1989, and you also knew that in 1988 there was a one-third drop in inspections because of resources being diverted to other activities. That's all true?

Mr. SIMS. Yes; that is all true.

Senator MCCAIN. Did you ever bring it to the attention of anyone above you that we had some problems here?

Mr. SIMS. Yes, sir. Not in the context of the theft situation, but certainly in the context of the impact that the erosion of our resources would have from our I & E program.

Senator MCCAIN. Do you believe that anyone who wanted to steal could, which was your deposition? Did you think you had a problem?

Mr. SIMS. I don't know that, and I still don't know today that there is a large problem out there with this oil theft. Certainly in hearing the testimony yesterday and today I am of the opinion that there appears to be some now. I did not know that last week or 3 weeks ago when I gave that deposition.

Senator MCCAIN. But you did believe that anybody that wanted to steal oil could.

Mr. SIMS. I believe that anybody that wants to steal anything can. That doesn't necessarily mean they get away with it or that they are going to do it. But if you can pick it up and move it, you can steal it.

Senator MCCAIN. Mr. Sims, that is a far different connotation from your deposition, sir. Your deposition said:

> I think anyone that wanted to steal oil could. The sites are remote, the handling of oil is not totally secure.

That does not indicate that they are going to get caught; in fact, reading from your deposition it is just the opposite.

Now are you saying that you believe that someone can steal, but they're probably going to get caught?

Mr. SIMS. I don't know whether they'll probably get caught or not. I said what I thought in the deposition. I'm not trying to change the meaning of it. When I am asked "Is it possible to steal oil?" Yes, it is possible to steal oil. I have no problem with making that statement.

Senator MCCAIN. Mr. Sims, your statement was not if it was possible. You are saying "I think anyone that wanted to steal oil could." So, again, that is very different from what you are saying right now.

Mr. SIMS. I still believe that's true, sir.

Senator MCCAIN. Mr. Brown, were you ever informed that anyone that worked for you believed that anyone that wanted to steal oil could?

Mr. BROWN. I don't know that I have had those specific words told to me by anyone.

Senator MCCAIN. Well, I just would like to clear up this smoke screen for a bit about 110,000 wells. No well except for those on BLM land are your responsibility, right? That's 5,000 or 6,000 wells; is that right?

Mr. BROWN. That is correct.

Senator MCCAIN. And so your responsibilities are to supervise and make sure the people who deserve the benefits derived from the operation of those wells receive them, at least as far as royalties are concerned; is that right?

Mr. BROWN. We have a role in that. Yes.

Senator MCCAIN. Do you believe, Mr. Sims, that you have enough people to carry out those duties?

Mr. SIMS. Depending on what your definition of "adequate" is.

Senator MCCAIN. I guess my definition of what is adequate is to see that the people who deserve the royalties and the benefits, which they sign a contract for, receive them. I guess that's my definition, and I don't think that that should be too complicated.

Mr. SIMS. I don't believe it is, sir. But I think when you talk about mismeasurement of oil and the taking of oil without proper payment in the amount of 7 barrels in a 200 or 400 barrel tank—at some point there is a point of no return on additional resources.

Senator MCCAIN. How about if it is in the millions of dollars?

Mr. SIMS. In the millions, certainly.

Senator MCCAIN. So you do not contradict the findings of the committee staff; is that right? You have no evidence to show that anything they did came up with inaccurate conclusions?

Mr. SIMS. I have a problem with the amount of potential loss to Indians on a yearly basis. If I understood correctly in the previous testimony, I heard that it was estimated that we were talking about tens of millions of dollars of loss a year. Based upon the total revenues that are generated on behalf of the Indians, that figure would appear to be out of the ball park.

Senator MCCAIN. Thank you.

Maybe I could ask the other two witnesses: do you feel that there are sufficient resources devoted to making sure that the Native Americans receive the royalties which they have contracted for?

Mr. PYLANT. I don't at this time after hearing this previous testimony.

Mr. GOODMAN. To do the job of totally monitoring purchasers, we wouldn't have enough people to do that at this time. In fact, in Inspection and Enforcement we monitor oil companies, not the purchasers. In a problem like that which has arisen here, this would flag us into that purchaser and we would investigate that. But we don't have that——

Senator MCCAIN. It seems to me it would be difficult to know whether the problem arose or not.

Mr. GOODMAN. In this production verification, there is not a time element there because the production verification that we can do can be done at this time. I don't like to make excuses. We had two inspections on board at that time. We've got two more now. One of them was teaching in New Mexico—the one that was on this. He also attended a training session, which is in the report. This is the reason we haven't dealt with this situation as quickly as we should have.

Senator MCCAIN. Well, let me say that that's the first statement so far that indicates that you should have dealt with the problem. Mr. Brown certainly doesn't seem to believe that apparently there is one here.

Thank you, Mr. Chairman.

Senator DECONCINI. The Senator from Oklahoma?

Senator NICKLES. Thank you, Mr. Chairman.

I need to leave, but I would like to find out—maybe staff could answer this as much as our panelists—how much money Indian tribes, and particularly Indian tribes in Oklahoma—it looks like

this is mostly in Oklahoma, or at least a lot of the tension has been focused in Oklahoma—how much Indian Tribes have lost in Oklahoma. I'm looking at these charts, and maybe staff can correct me, but are those strictly on Indian lands or not? When that says "company-wide," is that on all the oil of the company, or is it Indian land alone?

Senator DECONCINI. Senator Nickles, we'll be glad to try to respond to you. We had our staff here to testify most of yesterday on this subject matter giving the details of how they did their investigations and what they had. We would be glad to share that with you or have you sit down with Agent Elroy, who did the investigation. To answer your question here, that is all of Koch for Oklahoma-wide.

Senator NICKLES. Let me just make a couple of comments—and please correct me if I'm wrong.

A lot of the press—and I think I've shown you a couple of the clips—I just am interested in getting down to the facts. A lot of people have been talking about Indian Tribes being shorted $10 million or $12 million a year. I see Koch Oil has been mentioned specifically, and I see three or four other companies, and those minuses seem to be as large, if not larger, than the pluses, so evidently there is no problem there, and if there is a problem with Koch, maybe that should be handled in the courts or something.

But even looking at the Koch figures, and just to single out those—counsel can answer this question if he'd like to. Let's take the largest figure. The largest year was $12 million in 1986—the shortage. Somebody was underpaid. Correct me if I'm wrong, but isn't 87.5 percent of that—12.5 percent of that would be for the Indian tribe in the case if they had a royalty if it was all Indian land?

Senator DECONCINI. Mr. Ballen.

Mr. BALLEN. Senator, that is correct. Let me point out something to you that was pointed out in the testimony yesterday. Royalties are paid by oil companies pursuant to the lease agreements that are entered into. These vary from company to company and situation to situation.

Koch Oil, for instance, is one of the top 10 paying oil companies on Indian land in the United States, Senator Nickles, and they don't—on some leases the purchaser, the producer or the operator pays the royalty on that. So there is no way to determine if a purchaser—let's leave Koch aside—if any purchaser is mismeasuring oil, or stealing oil, or what have you, there is no way to determine. The purchaser, himself, doesn't know whether he is buying from Indian lands unless he has that responsibility in the lease agreement to pay for the oil.

Senator NICKLES. I understand. What I'm trying to get to, Mr. Chairman——

Mr. BALLEN. There's no way to quantify, in other words.

Senator NICKLES. Did the tribes—there was an underpayment on Koch Oil, according to this chart, or $12 million. Seven-eighths of that loss or underpayment was to whoever was purchasing the oil, and one-eighth to the royalty owner, whoever the royalty owner would happen to be.

In Oklahoma, according to the BLM—and correct me if I am wrong—five percent of the wells in Oklahoma would have an Indian royalty owner; is that correct?

Mr. BALLEN. Correct.

Senator NICKLES. The only thing I'm concerned about is headlines that Oklahoma Indians are losing $12 million a year, or $3 million a year—whatever that chart would be—if it is really that they would be losing one eighth of that, and then only maybe one-twentieth of that one-eighth. Do you see how—I think there is some miscommunication. That $12 million or $7 million is on total purchases company-wide, which the staff was able to get, but that is not really Oklahoma oil that is purchased directly from Indians, that's what I'm saying. By the time you take out the seven-eighths that Continental or whatever refinery bought the oil, because they're losing seven-eighths of the money.

Whoever purchases that oil for refinement is losing seven-eighths of that money, and then the royalty owner is losing one-eighth of it, and that offends me whether it be an Indian royalty owner or any other royalty owner. I'm offended by anybody that short-changes, but I also would like to have the real facts out.

If Oklahoma Indians have 5 percent of the royalty in Oklahoma, then they would have one-twentieth of one-eighth of those losses that are mentioned up there, which are less than what a lot of people have been perceiving. A lot of people have been saying Oklahoma Indians have been losing $12 million a year. Correct me if I am wrong, staff, but that is not correct.

Senator DECONCINI. Mr. Ballen, do you want to respond to that?

Mr. BALLEN. If you look at the chart, Senator—and this was gone over yesterday, sir—that chart refers simply to oil companies, including Koch Oil. Those are Koch Oil's own data for Oklahoma and company-wide. Koch cannot possibly determine—because, as I explained, you can't know from every lease situation when you are buying from an Indian allottee or when you're not buying from an Indian allottee.

There are many other companies active in Oklahoma besides Koch. Indeed, many companies larger than Koch operate in Oklahoma. There is a problem out there that these numbers reflect.

The Senator is absolutely correct in that if purchases are made, the Indian share is one-eighth or, in some instances, more.

Senator DECONCINI. Senator Nickles, let me just point out too that yesterday we had testimony from our staff investigators. They monitored eight different wells in a clandestine manner—a non-observant manner. In six of them they found violations of substantial losses of overages on the numbers. They were all Koch Industry, and all on Indian wells. That doesn't mean that they are only stealing from Indians, but they have certainly demonstrated on those six cases that they were long on the numbers on Indian lands. That is all we are trying to point out here, and that is all we have done.

Senator NICKLES. If 100 percent of that loss was on Indian lands, then, the loss to Indians in Oklahoma for 1988 would be one-eighth of that 2.1 million, or a loss of $300,000, or something like that.

Senator MCCAIN. For one company. Let me—could I interrupt, Mr. Chairman?

Senator DECONCINI. Yes.

Senator MCCAIN. We had Special Agent Elroy here who, in his testimony—I asked specifically what sums of money we are talking about that the Indians are losing—and I might add that Special Agent Elroy I believe has some 12 years in this business in Oklahoma, so he is not a person who was dispatched from Washington. In fact, the opposite is true.

Special Agent Elroy, are you still here?

Mr. ELROY. Yes, sir.

Senator MCCAIN. And it was your opinion, stated for the record, that some millions of dollars were deprived of Native Americans, in your estimate? Is that an accurate statement?

Mr. ELROY. We're doing a survey here, and we find that in six out of eight of the places that we selected at random they are stealing, and if they are only getting, as pointed out, 6 barrels of oil out of a 300 barrel tank, and they are pumping that tank every other day—I suppose you can make a speculation, but if we had six out of eight banks that we staked out being robbed, we would be extremely concerned that this is a pervasive problem.

So we projected that nationwide—either State of Oklahoma-wide or nationwide—it appears from just the cursory work that we have done that this problem may be way beyond anything we could estimate, and we haven't even looked at natural gas, where we did find some problems initially, or coal or some of these others where we also believe, looking at these figures, that there is also a lot of stealing.

So I think in fairness to the Senator from Oklahoma, I think that you're drawing good conclusions from the figures that you are seeing there. I understand exactly what you're saying. But the flip side of the coin is: if you gave me an investigative staff the size of the BLM and gave me a couple of years to do it, I would be back here with a carload of indictments and millions of dollars worth of fraud, I believe, based upon my experience and what we found on this survey.

Senator MCCAIN. Just for the record again, Special Agent Elroy, you have been involved in this investigative business for how many years in Oklahoma?

Mr. ELROY. I've been in Oklahoma about 17 years.

Senator MCCAIN. About 17 years of active investigation?

Mr. ELROY. Yes, sir.

Senator MCCAIN. Thank you.

Senator NICKLES. Thank you very much.

Senator DECONCINI. You're welcome, Senator Nickles. Thank you.

I have no further questions of these witnesses.

Does the Senator from Arizona have any other questions?

Senator MCCAIN. No, sir.

Senator DECONCINI. Thank you, gentlemen.

The committee will stand in recess until 10 a.m. tomorrow.

[Whereupon, at 3:29 p.m., the committee was adjourned, to reconvene at 10 a.m. on Thursday, May 11, 1989.]

APPENDIX

Additional Material Submitted for the Record

FILE COPY
Surname:

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

FEB 29 1988

To: Marty Suuberg - Special Assistant to the Solicitor

From: Acting Associate Solicitor - Division of General Law

Subject: Delegation of Authority to Assistant Secretary - PBA Regarding Intra-Agency Details for Drug Law Enforcement Task Force

Several provisions of the Departmental Manual (DM) may be construed, separately or together, to grant the Assistant Secretary - Policy, Budget and Administration (AS-PBA) authority to direct an intra-agency detail of personnel for drug law enforcement activities. This memorandum attempts to integrate the various provisions, copies of which are attached.

1) General delegations of authority from the Secretary to the AS-PBA are found at 209 DM 4.1. As with other Assistant Secretaries, the AS-PBA is delegated "all of the authority of the Secretary. . . ."

2) General responsibilities of the AS-PBA are set forth at 109 DM 4.1 et seq. Several broad provisions indicate that the AS-PBA has wide latitude to carry out all aspects of management projects. Sections 4.3 and 4.4, however, authorize the AS-PBA to exercise Secretarial directive and supervisory authority over many activities, including personnel management (this would include personnel details) and law enforcement. Also in this section is a provision authorizing the AS-PBA to assign responsibility for the execution, within available resources, of all laws and executive orders that impose obligations on the Secretary. This broad provision presumably extends to departmental enforcement of federal drug laws and executive orders, and gives the AS-PBA paramount authority therein. 109 DM 4.4E.

3) The general delegation of personnel management authority to Assistant Secretaries is made at 205 DM 8. This authority, which would extend to details of employees between bureaus, generally is delegated equally to all assistant secretaries to exercise within their individual area of responsbility, but does not limit the Secretary's authority delegated to the AS-PBA in 209 DM 4, discussed above. 205 DM 8.3. Section 8.3, moreover, reserves to the AS-PBA the authority to limit, suspend or revoke any authority delegated by or under 205 DM 8. This reservation of authority to the AS-PBA over other assistant secretaries can be construed as an ultimate authority of the AS-PBA to direct an intra-agency detail to serve the needs of drug-related law enforcement. See also 370 DM 230.1.

4) It should be noted that 370 DM 300, 3.4 provides that inter-bureau details may be approved by bureau heads. In light of the AS-PDA's authorities in 209 DM 4.1 and 205 DM 9.3, the AS-PDA has authority over and above that of the bureau heads to approve or direct such details.

Timothy S. Elliott

Attachments

cc: Docket/Chron/Subject/Reading/Art/Elliott
AGARY:lnr:02/08/88:Memos:DOA re:Intra-Agency

4.1 Delegation. Subject to the limitations in 200 DM 1, the Assistant Secretary--Policy, Budget, and Administration is authorized to exercise all of the authority of the Secretary including:

A. The authority to issue amendments of and additions to the material in the Code of Federal Regulations.

B. The authority delegated to the Secretary by Section 204(a) of Public Law 94-579, relating to the withdrawal or reservation of certain lands by the issuance of public land orders.

C. The administration of the oath of office or any oath required by law in connection with employment.

4.2 Authority to Redelegate. The Assistant Secretary--Policy, Budget, and Administration may redelegate the authority delegated in 209 DM 4.1, except where prohibited by statute, Executive order, or limitations established by other competent authority. Such redelegations will be restricted to authority related to the programs, functions, and responsibilities assigned exclusively to the Assistant Secretary--Policy, Budget, and Administration, and will be issued in strict compliance with the procedural requirements in Part 200 of the Departmental Manual.

4.3 Deputy Assistant Secretary.

A. Under conditions specified by the Assistant Secretary--Policy, Budget, and Administration, a Deputy Assistant Secretary--Policy, Budget, and Administration may exercise the authority delegated in 209 DM 4.1 and 209 DM 4.2, excluding 209 DM 4.1B.

4.4 Merit Systems Protection Board Investigations. Under conditions specified by 358 DM 2, the Assistant Secretary, Policy, Budget and Administration is authorized to exercise the authority of the Secretary to resolve and determine final actions on matters of dispute between an Assistant Secretary; bureau or office director; and the Inspector General. This authority may not be redelegated.

3/9/79 #2162
Replaces 10/31/77 #2040

4.1 General. The Assistant Secretary--Policy, Budget and Administration discharges the authority of the Secretary for all phases of management and administrative activities, and serves as the principal policy advisor to the Secretary.

4.2 Responsibilities. The Assistant Secretary—Policy, Budget and Administration is responsible for:

A. Providing detailed and objective advice on program planning, budget, and policy matters to include; (1) developing goals (general, strategic, and long term) and policies (guidelines and rules for Departmental direction), (2) allocating resources to meet these goals and policies, (3) recommending corrective action, as necessary, to modify goals or objectives, to decrease or increase resource use, and to change implementation metnods, and (4) coordinating liaison with the Office of Management and Budget and the Congressional Appropriations and Budget Committees in managing the execution of budget policy;

B. Developing and maintaining administrative policy, standards, objectives, and procedures for use throughout the Department and providing technical assistance and counsel in administrative matters to offices and bureaus;

C. Coordinating organizational aspects of proposed legislation with appropriate bureaus and offices;

D. Undertaking special management-related projects for the Secretary;

E. Providing management and administrative support services for the Office of the Secretary;

F. Overseeing audit followup, including resolution and corrective action, as Departmental Audit Followup Official.

4.3 Supervisory Authority. The Assistant Secretary—Policy, Budget and Administration exercises Secretarial direction and supervision over staff offices for the activities described below.

4.4 Scope of Activities. In carrying out the responsibilities described in 109 DM 4.2, the Assistant Secretary—Policy, Budget and Administration performs or supervises the performance of the following activities:

A. Exercises policy oversight and guidance in the areas of program development and evaluation; long-range planning; budget planning and execution; economic analysis of programs; and evaluation of Departmental activities related to: personnel management, property, safety, and space management: emergency preparedness; procurement and grants including coordination of related minority business →

programs; energy conservation and law enforcement programs; financial management and related information systems; aircraft services: printing and publications; management systems and procedures; and information resources management including ADP services and telecommunications. library and related information services; regulatory management; and construction management.

B. Maintains oversight of policy, program development, planning, and provides staff leadership for budget development and execution, review of natural resources and environmental quality policy proposals, implementation of the National Environmental Policy Act (NEPA), organization planning, analysis, and management and review/approval of Department studies and organization proposals, coordination of the Department's program involving the leasing and management of the outer continental shelf for oil and gas development, and compliance with the Coastal Zone Management Act, as amended.

C. Furnishes administrative support and services to members of the Secretariat and organizational units of the Office of the Secretary including personnel, financial, procurement, ADP, and related administrative services.

D. Represents the Secretary in interpreting and communicating assigned program activities to various groups and to the general public; maintains liaison with members of Congress and committee staffs, and testifies before Congressional committees on budgetary matters and legislative proposals; represents the Department in contacts with other governmental agencies, and with various private users and public interest groups; and solicits and utilizes, as appropriate, information related to assigned program areas from each of these extra-Departmental sources.

E. Assigns responsibility for the execution, within available resources, of all laws and Executive Orders imposing obligations on the Secretary with respect to assigned programs.

F. Administers and monitors the Departmental program governing the conduct and responsibilities of employees and serves as the Designated Agency Ethics Official for the Department: is responsible for supervision of the Equal Employment Opportunity Program for the Office of the Secretary and Other Departmental Offices; and develops, oversees and coordinates the Department's Committee Management Program.

G. Maintains oversight of audit followup in the Department, as defined by OMB Circular A-50 (Revised) dated September 29, 1982.

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8.1 Personnel Management Authority.

A. Delegation. The Assistant Secretaries, the Solicitor, and the High Commissioner, Trust Territory of the Pacific Islands, are authorized to exercise the personnel management authority of the Secretary of the Interior. The exercise of this authority includes, but is not limited to the following activities and their associated personnel programs:

(1) Appointments

(2) Changes

(3) Position Classification and Pay

(4) Separations

(5) Designation of persons to administer oaths

(6) Determinations on avoidance of forfeiture or restoration of annual leave.

B. Authority. This authority is delegated under the provisions of section 2 of Reorganization Plan III of March 13, 1950 (64 Stat. 1262) and it may be redelegated in total, or by specific function such as the authority to administer oaths.

8.2 Limitations. The authority granted in 205 DM 8.1A excludes the exercise of specific authorities limited to the Secretary; Assistant Secretary - Policy, Budget, and Administration; the Director of Personnel or the Chief, Division of Personnel Services; set out below, in Part 210 of the DM and in the DM Additions to the FPM. Examples of these exclusions are:

A. Action in the absence of Secretarial approval on appointments, details, changes, separations, and removals requiring Secretarial approval (370 DM 311). key personnel

B. Approval of basic labor agreements, or amendments or terminations of such agreements, negotiated between a bureau or an organizational element thereof and labor organizations representing employees of the bureau which require the approval of the Director of ~~Personnel~~ (370 DM 711).

7/15/80 #2278
Replaces 10/25/79 #2207

C. Position classification actions reserved to the Office of Personnel (370 DM 511).

D. Authority to make determinations that the exigencies of the public business are of such importance as to preclude the use of annual leave to avoid forfeiture, as provided in Public Law 93-181, (5 U.S.C. 6304), and pertinent regulations of the Office of Personnel Management (OPM) may not be redelegated below the head of the bureau.

E. Any action by an Assistant Secretary, except the Assistant Secretary - Policy, Budget, and Administration, concerning a Secretarial or Other Departmental Office without the approval of the Chief, Division of Personnel Services (210 DM 18).

F. The authority of the High Commissioner of the Trust Territory of the Pacific Islands does not include:

(1) Appointment of new Federal employees without the prior review of the Assistant Secretary - Territorial and International Affairs and the Chief, Division of Personnel Services.

(2) Any action concerning positions or employees at GS-13 or above without prior approval of the Assistant Secretary - Territorial and International Affairs and the Chief, Division of Personnel Services.

(3) Adverse actions or reduction-in-force affecting Federal employees without prior approval of the Assistant Secretary - Territorial and International Affairs and the Chief, Division of Personnel Services.

(4) Any action not in accordance with policy applicable to the Office of the Secretary and Other Departmental Offices or with technical oversight of the Office of Secretarial Operations.

G. The following authorities or delegations from the Office of Personnel Management (OPM) are reserved to the Secretary, Under Secretary, or the Assistant Secretary - Policy, Budget and Administration:

(1) Exclusion of Presidential Appointees from leave provisions (5 CFR 630.211).

(2) Executive Personnel Authorities subject to terms of the delegation agreement and any other guidance and limitations imposed by the Office of Personnel Management (OPM) concerning the establishment, final classification, salary setting, recruitment, appointing authority, and qualifications approval for positions in the Senior Executive Service; at grades GS-16, 17, and 18; and established under Section 3104 of 5 U.S.C. (PL 313 Type). The Assistant Secretary - Policy, Budget and Administration may redelegate this authority to the Director of Personnel.

H. The following authorities or delegations from the Office of Personnel Management (OPM) require the prior approval of the Assistant Secretary - Policy, Budget and Administration:

(1) Appointment of United States citizens recruited overseas (5 CFR 301.201).

(2) Appointment of citizens recruited outside overseas areas (5 CFR 301.202).

(3) Appointment based on service in the Office of the President or Vice President or on the White House Staff (5 CFR 315.602).

(4) Appointment based on legislative or judicial service. (5 U.S.C 3304, FPM Chapter 315, Subchapter 6).

(5) Determination of manpower shortage for positions at level GS-16 and above or equivalents (5 CFR 572.101).

(6) Approval of Alternate Standards for Motor Vehicle Operators (5 CFR 930.105).

I. The following authority or delegation from the Office of Personnel Management (OPM) may not be redelegated below the level of associate or assistant head of a bureau or the head of an office.

(1) Exceptions to Section 5533(a) of Title 5, United States Code to permit compensation from more than one civilian office (5 CFR 550.504).

J. The following authorities from OPM are reserved to the Secretary, Under Secretary, Assistant Secretary - Policy, Budget and Administration, or the Director of Personnel:

(1) Establishment of excepted positions (Schedule C only) (E.O 10577 and CS Rule 6.1)

(2) Temporary assignment of excepted employees to competitive positions (Schedule C only) (CS Rule 6.5).

(3) Rare bird - (E.O. 10577) (CS Rule 3.2) and (5 CFR 316.601).

(4) Payment for travel and transportation to first post of duty (5 U.S.C 5723).

(5) Training agreements (FPM Chapter 271).

(6) Agency consultation on classification actions affecting 20 or more positions (FPM Chapter 511-A-4).

(7) Establishing smaller competitive areas in RIF (5 CFR 351.402(c)).

(8) Controls on non-Government facility training (5 U.S.C 4106(a) and (b)).

(9) Exceptions to prohibition on payment of premium pay for periods of training (5 U.S.C 4109(a)(1); 5 CFR 410.602(a); Section 401(a) of E.O. 11348).

K. The following authority from OPM may not be redelegated below the level of Assistant Secretary:

(1) Waiver of time-in-grade requirements (5 CFR Part 300; Subpart F).

L. The following authority is restricted to the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary - Land and Water Resources. The authority may not be redelegated any lower than the level of Director, National Park Service and the Commissioner, Water and Power Resources Service:

(1) Bringing excepted positions or units of public or private enterprise into the competitive service (5 CFR 316.701 and 316.702).

8.3 Authority to Suspend or Revoke Personnel Management Authority. This chapter does not limit the authority delegated to the Assistant Secretary - Policy, Budget and Administration by 209 DM 4. The Assistant Secretary - Policy, Budget and Administration is authorized to limit, suspend, or revoke any authority granted by or pursuant to 205 DM 8.

8.4 Personnel Management Authority of the Inspector General. Nothing in this chapter affects the authority of the Inspector General, under the general supervision of the Secretary, to select, appoint, and employ an Assistant Inspector General for Auditing, an Assistant Inspector General for Investigations, and such other officers and employees as may be necessary to carry out the duties, functions, and powers of the Office of Inspector General in accordance with Subsections 3(d) and 6(a) of the Inspector General Act of 1978, 92 Stat. 1102 and 1104.

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Subchapter 1. Responsibilities for Personnel Management Within the Executive Branch of the Government

1.1 Responsibilities.

A. The Assistant Secretary - Policy, Budget and Administration discharges the duties of the Secretary with respect to personnel management.

B. The Office of Personnel has primary staff responsibility for the effective utilization and management of human resources to accomplish the overall missions of the Department. The scope of responsibilities within this function include:

(1) Initiation and development of policies and procedural requirements including preparation, issuance and implementation of standards, guidelines and instructions to the bureaus and offices of the Department pertaining to planning for, obtaining, using and developing staff through such activities as recruitment, examining, selection and placement; employee development, performance appraisal and utilization; position management and classification; employee compensation and pay administration; labor management relations, employee relations; incentive awards, medical and health services; insurance and annuities; attendance and leave; and personnel records, reports and statistics.

(2) Development and coordination of comprehensive programs for the evaluation of personnel management effectiveness, including delegations of authority.

(3) Coordination of bureau personnel programs.

(4) Providing advice and assistance to the Secretariat and other levels of management in the development and administration of an effective personnel program.

(5) Coordination and direction of the personnel subject matter content of automated systems.

[redacted] set forth by [redacted] in FPM 990, and other limitations and restrictions prescribed by [redacted] and regulations cited in this chapter.

8.3 Procedures and Instructions.

A. Reimbursable Details. A detail on a reimbursable basis shall be covered by a written agreement negotiated in advance of the detail and signed by responsible administrative officials of both organizational units or agencies involved.

B. Records.

(1) An employee shall be given a written notice when a detail will extend beyond 30 days. Such a detail shall be recorded in the employee's official personnel folder in accordance with instructions in FPM 300.

(2) Personnel offices shall maintain appropriate records to insure that the time limit of a detail is not exceeded.

C. Details to Duties or Positions that have not been Classified. FPM 511 contains the requirements for classification action when employees are detailed beyond a period of 120 days to duties or positions which have not been classified.

D. Disciplinary Action. The office in which an employee is regularly employed is responsible for any disciplinary action taken during a detail to another position. Other than for a minor infraction of rules for which a reprimand may be given, the misconduct of an employee on detail shall be reported to his regular place of employment for appropriate action.

8.4 Details Within the Department. Employees may be detailed within the Department for periods not exceeding 120 days, except employees who are required by statute to be exclusively engaged on some specific work. (5 U.S.C. 3341) These details may be renewed by written order, in each particular case, for periods not exceeding 120 days, subject to the limitations established by the Office of Personnel Management in FPM 300.8. Under the delegation of authority in the Department, details of employees other than those falling in the categories listed in 370 DM 300,8.2A, may be approved by the head of the bureau or his/her designated representative. Details within the Department may be made in any of the following or similar circumstances.

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(6) Maintenance of continuing liaison and representation for the Department on personnel matters with outside contacts such as the Office of Personnel Management (OPM), Office of Management and Budget (OMB), Merit Systems Protection Board (MSPB), Federal Labor Relations Authority (FLRA), Department of Labor, other Government agencies, labor groups, and private organizations.

The organization of the Office is described in 110 DM 15.

C. The Assistant Secretaries, Solicitor, Heads of Bureaus and other management officials are responsible for effective personnel management throughout their organizations. Bureaus shall provide necessary support for the personnel function to insure consistent, efficient and equitable personnel management practices. Personnel offices provide advice and staff assistance to management and supervisors in performing personnel functions. Information on general delegations of authority concerning personnel management are contained in 200 DM 1, 2 and 3, 205 DM 2, 8 and 15, 209 DM 4, 210 DM 15, 370 DM 230, 2, and 370 DM 331,4. Limitations for certain specific functional areas are contained in the chapters on those subjects.

10/9/81 FPM 24a
Replaces 11/18/69 FPM 124

3614

TULSA DISTRICT OFFICE

Oil Theft

Year	Date Reported	Lease/Agr. No	BO	Value
1981	None	-----	--	-0-
1982	None	-----	--	-0-
1983	None	-----	--	-0-
1984	July 24, 1984	14-20-208-620	72	$1,080
1984	August 2, 1984	14-20-208-620	228	$3,420
1984	December 31, 1984	67576	120	$1,800
1985	April 30, 1985	14-20-0208-3762	80	$1,200
1985	May 30, 1985	14-20-205-6210	160	$2,400
1985	October 8, 1985	14-20-208-3507	180	$2,700
1985	October 28, 1985	69865	175	$2,625
1985	October 28, 1985	MC-IND-U-154	196	$2,940
1986	June 18, 1986	U40T002-I	155	$2,325
1987	None	------	--	-0-
1988	None	------	--	-0-
1989	None	------	--	-0-
		TOTAL	1,366	$20,490

The total number of thefts reported for eight (8) years is nine (9).